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9:00 a.m.–Noon

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Washington, DC 20002

RESERVATIONS: (202) 741-6008



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Rules and Regulations

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This section of the FEDERAL REGISTER contains regulatory documents having general applicability and legal effect, most of which are keyed to and codified in the Code of Federal Regulations, which is published under 50 titles pursuant to 44 U.S.C. 1510.

The Code of Federal Regulations is sold by the Superintendent of Documents. Prices of new books are listed in the first FEDERAL REGISTER issue of each week.

DEPARTMENT OF AGRICULTURE

Commodity Credit Corporation

7 CFR Part 1427

RIN 0560-AH36

Extra Long Staple Cotton Prices

AGENCY: Commodity Credit Corporation, USDA.

ACTION: Interim final rule.

SUMMARY: This rule amends and requests comment on the Extra Long Staple (ELS) Cotton Competitiveness Payment Program of the Commodity Credit Corporation (CCC). This rule changes the ELS cotton price used to calculate the payment rate from the "average domestic spot price quotation for base quality U.S. Pima cotton" to the "American Pima c.i.f. Northern Europe" price. The change is intended to reduce the cost to the Federal Government of operating the program by incorporating a reference price more indicative of actual ELS cotton world market prices.

DATES: This interim rule is effective August 5, 2005. The first announcement of a payment rate under the new price mechanism will be on Thursday, August 4, 2005. Written comments via letter, facsimile, or Internet are invited from interested individuals and organizations and must be received on or before July 20, 2005 in order to be assured consideration.

ADDRESSES: FSA invites interested persons to submit comments on this interim final rule. Comments may be submitted by any of the following methods:

- **E-Mail:** Send comments to Steve.Neff@usda.gov. [Include "ELS Cotton Interim Rule," in the subject line of the message].
- **Fax:** Send comments by facsimile transmission to (202) 690-2186.
- **Mail:** Send comments to: Steve Neff, Economic and Policy Analysis

Staff, Farm Service Agency, United States Department of Agriculture, 1400 Independence Avenue, SW., AG STOP 0515, Washington, DC 20250-0515.

• **Hand Delivery or Courier:** Deliver comments to: Steve Neff, Economic and Policy Analysis Staff, Farm Service Agency, United States Department of Agriculture, 1400 Independence Avenue, SW., Room 3741-S, Washington, DC 20250-0515.

• **Federal eRulemaking Portal:** Go to <http://www.regulations.gov>. Follow the online instructions for submitting comments.

FOR FURTHER INFORMATION CONTACT: Steve Neff at the above address or by telephone at (202) 720-7954.

SUPPLEMENTARY INFORMATION:

Background

The Commodity Credit Corporation (CCC) has decided to change the regulations governing how payment rates are calculated under its Extra Long Staple (ELS) Cotton Competitiveness Payment Program to provide that the price currently used, "U.S. spot quotes," will be replaced by the "American Pima c.i.f. Northern Europe quote." The current ELS payment rate is determined by the difference between U.S. spot prices, as reported by the Department of Agriculture (USDA), Agricultural Marketing Service (AMS), and the lowest foreign quote, c.i.f. Northern Europe, as published by *Cotton Outlook*, adjusted to U.S. location and quality. Recent payments to ELS producers have increased budget outlays under this program sharply. For example, the payment rate, which averaged a record high of 16.46 cents per pound last year, averaged 80.48 cents per pound for 7 weeks in February and March, 2005. Consequently, fiscal year 2005 outlays through March, 2005, normally budgeted for \$50-55 million per year, exceeded \$150 million.

The increase in the payment rate is attributed principally to increases in U.S. spot market quotes. The market for ELS is susceptible to price swings because it is a thin market. ELS production of 736,000 bales in 2004 is only 4 percent of total U.S. cotton production and 90 percent of ELS is produced in the San Joaquin Valley of California. The ELS market also has relatively few participants. For example, two trading companies have received nearly 60 percent of the payments under

this program in fiscal years 2003 and 2004. Further, growing conditions in 2004 likely contributed to a short supply of high-quality ELS cotton, as excess moisture led to color deterioration and consequent Grade 3 classification. These circumstances exposed a program weakness which allows high prices and high payment rates to influence each other with no market-like, self-correcting mechanism. AMS collects transaction data from market participants whose payments depend on the reported prices. If a sale is made at a relatively low price, the merchant has no incentive to report that transaction. With a high payment rate in effect for a week, the merchant can bid more for existing supplies and report higher transaction prices to AMS, which lead to a higher payment rate in the following week. With the higher payment rate, the merchant can source from the United States and remain competitive in international markets.

This rule is expected to reduce future payment rates by comparing foreign quotes to quotes from *Cotton Outlook* for American Pima c.i.f. Northern Europe to determine the payment rate. American Pima c.i.f. Northern Europe was determined to be the most valid price measure for this program because it is a comparison of foreign and U.S. quotes from the same source within the same geographical area. This measure is a net of the payment rate and based on the export market. FSA believes that this measure is appropriate because 90 percent of U.S.-produced ELS cotton is exported. According to our analysis, the payment rate calculated in this manner would have resulted in a payment of 20.69 cents per pound for the first week of April, about a quarter of the rate CCC actually paid.

This rule makes additional non-substantive changes to the subpart governing this program for clarity, structure, and readability.

Notice and Comment

Section 1601(c) of the Farm Security and Rural Investment Act of 2002 (2002 Act) provides that the regulations needed to implement Title I of the 2002 Act, which includes this rule, shall be promulgated without regard to the notice and comment provisions of 5 U.S.C. 553 or the Statement of Policy of the Secretary of Agriculture effective July 24, 1971 relating to notices of

proposed rulemaking and public participation in rulemaking. Therefore, this rule is issued as an interim final rule and effective immediately. Nonetheless, the Agency will accept public comments for 60 days after publication of this rule.

Executive Order 12866

This rule is issued in conformance with Executive Order 12866, was determined to be not significant and has not been reviewed by the Office of Management Budget.

Regulatory Flexibility Act

It has been determined that the Regulatory Flexibility Act is not applicable to this rule because CCC is not required by 5 U.S.C. 533 or any other law to publish a notice of proposed rulemaking for the subject matter of this rule.

Environmental Assessment

The environmental impacts of this rule have been considered in accordance with the provisions of the National Environmental Policy Act of 1969 (NEPA), 42 U.S.C. 4321 *et seq.*, the regulations of the Council on Environmental Quality (40 CFR parts 1500–1508), and the FSA regulations for compliance with NEPA, 7 CFR part 799. FSA concluded that the rule requires no further environmental review because it is categorically excluded. No extraordinary circumstances or other unforeseeable factors exist which would require preparation of an environmental assessment or environmental impact statement.

Executive Order 12988

This rule has been reviewed in accordance with Executive Order 12988. This rule preempts State laws that are inconsistent with it. Before any legal action may be brought regarding a determination under this rule, the administrative appeal provisions set forth at 7 CFR parts 11 and 780 must be exhausted.

Executive Order 12372

This program is not subject to the provisions of Executive Order 12372, which require intergovernmental consultation with State and local officials. See the notice related to 7 CFR part 3014, subpart V, published at 48 FR 29115 (June 24, 1983).

Unfunded Mandates Reform Act of 1995

The rule contains no Federal mandates under the regulatory provisions of Title II of the Unfunded Mandates Reform Act of 1995 (UMRA)

for State, local, and tribal governments or the private sector. Thus, this rule is not subject to the requirements of sections 202 and 205 of the UMRA.

Paperwork Reduction Act

Section 1601(c) of the 2002 Act provides that the promulgation of regulations and the administration of Title I of the 2002 Act shall be made without regard to chapter 35 of title 44 of the United States Code (the Paperwork Reduction Act). Accordingly, these regulations and the forms and other information collection activities needed to administer the program authorized by these regulations are not subject to review by OMB under the Paperwork Reduction Act.

Executive Order 12612

This rule does not have sufficient federalism implications to warrant the preparation of a Federalism Assessment. The provisions contained in this rule will not have substantial direct effect on States or their political subdivisions or on the distribution of power and responsibilities among the various levels of government.

Government Paperwork Elimination Act

CCC and FSA are committed to compliance with the Government Paperwork Elimination Act (GPEA) and the Freedom to E-File Act, which require Government agencies in general and FSA in particular to provide the public the option of submitting information or transacting business electronically to the maximum extent possible. The forms and other information collection activities required for participation in the program are available electronically through the USDA eForms Web site at <http://www.sc.egov.usda.gov> for downloading. Applications may be submitted at the FSA county offices, by mail or by FAX. At this time, electronic submission is not available. Full development of electronic submission is underway.

Federal Assistance Programs

The title and number of the Federal assistance program found in the Catalog of Federal Domestic Assistance to which this final rule applies are Commodity Loans and Loan Deficiency Payments, 10.051.

List of Subjects in 7 CFR Part 1427

Agricultural commodities, Cotton, Price support programs, Reporting and recordkeeping requirements.

■ For the reasons set out in the preamble, 7 CFR part 1427 is amended as follows:

PART 1427—COTTON

■ 1. The authority citation continues to read as follows:

Authority: 7 U.S.C. 7231–7237 and 7931 *et seq.*; 15 U.S.C. 714b, 714c.

Subpart G—Extra Long Staple (ELS) Cotton Competitiveness Payment Program

■ 2. Revise subpart G to read as follows:

Subpart G—Extra Long Staple (ELS) Cotton Competitiveness Payment Program

Sec.	
1427.1200	Applicability.
1427.1201	[Reserved]
1427.1202	Definitions.
1427.1203	Eligible ELS cotton.
1427.1204	Eligible domestic users and exporters.
1427.1205	ELS Cotton Domestic User/Exporter Agreement.
1427.1206	Form of payment.
1427.1207	Payment rate.
1427.1208	Payment.

Subpart G—Extra Long Staple (ELS) Cotton Competitiveness Payment Program

§ 1427.1200 Applicability.

(a) These regulations set forth the terms and conditions under which CCC shall make payments to eligible domestic users and exporters of extra long staple cotton who have entered into an ELS Cotton domestic User/Exporter Agreement with CCC.

(b) CCC will issue payments to domestic users and exporters in any week following a consecutive 4-week period in which:

(1) The LFQ is less than the APNE; and

(2) Adjusted LFQ is less than 134 percent of the current crop year loan level for the base quality U.S. Pima cotton.

(c) CCC shall prescribe the forms and information collections necessary in administering the ELS cotton competitiveness payment program. Additional terms and conditions for the program are set forth in the ELS Cotton Domestic User/Exporter Agreement.

§ 1427.1201 [Reserved]

§ 1427.1202 Definitions.

The following definitions apply as used in this subpart:

APNE means the Friday through Thursday weekly average of the price quotation for base quality U.S. Pima cotton, as determined by CCC for purposes of administering this subpart, c.i.f. Northern Europe.

(1) *APNEc* means the preceding Friday through Thursday average of the current shipment prices for U.S. Pima cotton, c.i.f. northern Europe.

(2) *APNEf* means the preceding Friday through Thursday average of the forward shipment prices for U.S. Pima cotton, c.i.f. northern Europe.

Consumption means the use of eligible ELS cotton by a domestic user in the manufacture in the United States of cotton products.

Cotton product means any product containing cotton fibers that result from the use of an eligible bale of ELS cotton in manufacturing.

Current shipment price means, during the period in which two daily price quotations are available for the LFQ for the foreign growth, quoted c.i.f. northern Europe, the price quotation for cotton for shipment no later than August/September of the current calendar year.

ELS means Extra Long Staple.

Forward shipment price means, during the period in which two daily price quotations are available for the LFQ for foreign growths, quoted c.i.f. northern Europe, the price quotation for cotton for shipment no earlier than October/November of the current calendar year.

LFQ means, during the period in which only one daily price quotation is available for the growth, the lowest average for the preceding Friday through Thursday week of the price quotations for foreign growths of ELS cotton, quoted cost, insurance, and freight c.i.f. northern Europe, after each respective average is adjusted for quality differences between the respective foreign growth and U.S. Pima, of the base quality.

(1) *Adjusted LFQ* means the LFQ adjusted to reflect the estimated cost of transportation between an average U.S. location and Northern Europe.

(2) *LFQc* means the preceding Friday through Thursday average of the current shipment prices for the lowest adjusted foreign growth, c.i.f. northern Europe.

(3) *LFQf* means the preceding Friday through Thursday average of the forward shipment prices for the lowest adjusted foreign growth, quoted c.i.f. northern Europe.

§ 1427.1203 Eligible ELS cotton.

(a) For the purposes of this subpart, eligible ELS cotton is domestically produced baled ELS cotton that is:

- (1) Opened by an eligible domestic user on or after October 1, 1999, or
- (2) Exported by an eligible exporter on or after October 1, 1999, during a Friday through Thursday period in which a payment rate determined under

§ 1427.1207 is in effect, and that meets the requirements of paragraphs (b) and (c) of this section;

(b) Eligible ELS cotton must be either:

(1) Baled lint, including baled lint classified by USDA's Agricultural Marketing Service as Below Grade; or

(2) Loose.

(c) Eligible ELS cotton must not be:

(1) ELS for which a payment, under the provisions of this subpart, has been made available;

(2) Imported ELS cotton;

(3) Raw, unprocessed motes;

(4) Textile mill wastes; or

(5) Semi-processed or re-ginned, processed motes.

§ 1427.1204 Eligible domestic users and exporters.

(a) For the purposes of this subpart, the following persons shall be considered eligible domestic users and exporters of ELS cotton:

(1) A person regularly engaged in the business of opening bales of eligible ELS cotton to manufacturing such cotton into cotton products in the United States (a domestic user), who has entered into an agreement with CCC to participate in the ELS Cotton Competitiveness Payment Program; or

(2) A person, including a producer or a cooperative marketing association approved under part 1425 of this chapter, regularly engaged in selling eligible ELS cotton for exportation from the United States (an exporter), who has entered into an agreement with CCC to participate in the ELS Cotton Competitiveness Payment Program.

(b) Payment applications must contain the documentation required by this subpart, an ELS Cotton Domestic User/Exporter Agreement and additional information that may be requested by CCC.

§ 1427.1205 ELS Cotton Domestic User/Exporter Agreement.

(a) Payments under this subpart shall be made available to eligible domestic users and exporters who have entered into an ELS Cotton Domestic User/Exporter Agreement with CCC and who have complied with the terms and conditions in this subpart, the ELS Cotton Domestic User/Exporter Agreement and CCC-issued instructions.

(b) ELS Cotton Domestic User/Exporter Agreements may be obtained from CCC. To participate in the program authorized by this subpart, domestic users and exporters must execute the ELS Cotton Domestic User/Exporter Agreement and forward the original and one copy to CCC.

§ 1427.1206 Form of payment.

Payments under this subpart shall be made available in the form of commodity certificates issued under part 1401 of this chapter, or in cash, at the option of the participant, as CCC determines and announces.

§ 1427.1207 Payment rate.

(a) The payment rate for payments made under this subpart shall be determined as follows:

(1) Beginning the Friday on or following August 1 and ending the week in which the LFQc, the LFQf, the APNEc, and the APNEf prices first become available, the payment rate shall be the difference between the APNE and the LFQ in the fourth week of a consecutive 4-week period in which the APNE exceeded the LFQ each week, and the adjusted LFQ was less than 134 percent of the current crop year loan level for U.S. base quality Pima cotton in all weeks of the 4-week period; and

(2) Beginning the Friday-through-Thursday week after the week in which the LFQc, the LFQf, the APNEc, and the APNEf prices first become available and ending the Thursday following July 31, the payment rate shall be the difference between the APNEc and the LFQc in the fourth week of a consecutive 4-week period in which the APNEc exceeded the LFQc each week, and the adjusted LFQc was less than 134 percent of the current crop year loan level for base quality U.S. Pima in all weeks of the 4-week period. If either or both the APNEc and the LFQc are not available, the payment rate may be the difference between the APNEf and the LFQf.

(b) Whenever a 4-week period under paragraph (a) of this section contains a combination of LFQ, LFQc, and LFQf for only one to three weeks, such as may occur in the spring when the LFQ is succeeded by the LFQc and the LFQf (spring transition), and at the start of a new marketing year when the LFQc and the LFQf are succeeded by the LFQ (marketing year transition), under paragraphs (a)(1) and (a)(2) of this section, during both the spring transition and the marketing year transition periods, the LFQc and APNEc, in combination with the LFQ and APNE, shall, to the extent practicable, be considered during such 4-week periods to determine whether a payment is to be issued. During both the spring transition and the marketing year transition periods, if either or both APNEc price and the LFQc are not available, the APNEf and the LFQf in combination with the APNE price and LFQ shall be taken into consideration during such 4-week periods to

determine whether a payment is to be issued.

(c) For purposes of this subpart, regarding the determination of the APNE, APNEc, APNEf, the LFQ, the LFQc, and the LFQf:

(1) If daily quotations are not available for one or more days of the 5-day period, the available quotations during the period will be used;

(2) If none of the APNE, APNEc, or APNEf prices is available, or if none of the LFQ, LFQc, or LFQf is available, the payment rate shall be zero and shall remain zero unless and until sufficient APNE prices or the LFQ again becomes available, the APNE, APNEc, or APNEf price exceeds the LFQ, the LFQc, or the LFQf, as the case may be, and the LFQ, the LFQc, or the LFQf, as the case may be, adjusted for transportation, is less than 134 percent of the current crop year loan rate for base quality U.S. Pima for 4 consecutive weeks.

(d) Payment rates for loose, re-ginned motes and semi-processed motes that are of a suitable quality, without further processing, for spinning, papermaking or bleaching, shall be based on a percentage of the basic rate for baled lint, as specified in the ELS Cotton Domestic User/Exporter Agreement.

§ 1427.1208 Payment.

(a) Payments under this subpart shall be determined by multiplying:

(1) The payment rate, determined under § 1427.127, by

(2) The net weight (gross weight minus the weight of bagging and ties) determined under paragraph (b) of this section, of eligible ELS cotton bales that an eligible domestic user opens or an eligible exporter exports during the Friday through Thursday period following a week in which a payment rate is established.

(b) For the purposes of this subpart, the net weight shall be based upon:

(1) For domestic users, the weight on which settlement for payment of the ELS cotton was based (landed mill weight);

(2) For re-ginned motes processed by an end user who converted such motes, without re-baling, to an end use in a continuous manufacturing process, the net weight of the re-ginned motes after final cleaning;

(3) For exporters, the shipping warehouse weight or the gin weight if the ELS cotton was not placed in a warehouse, of the eligible cotton unless the exporter obtains and pays the cost of having all the bales in the shipment re-weighed by a licensed weigher and furnishes a copy of the certified weights.

(c) For the purposes of this subpart, eligible ELS cotton will be considered:

(1) Consumed by the domestic user on the date the bale is opened for consumption; and

(2) Exported by the exporter on the date that CCC determines is the date on which the cotton is shipped for export.

(d) Payments under this subpart shall be made available upon application for payment and submission of supporting documentation, as required by this subpart, CCC instructions, and the ELS Cotton Domestic User/Exporter Agreement.

Signed in Washington, DC, on June 2, 2005.

James R. Little,

Executive Vice President, Commodity Credit Corporation.

[FR Doc. 05-12034 Filed 6-17-05; 8:45 am]

BILLING CODE 3410-05-P

DEPARTMENT OF TRANSPORTATION

Federal Aviation Administration

14 CFR Part 39

[Docket No. FAA-2005-21357; Directorate Identifier 2005-CE-29-AD; Amendment 39-14136; AD 2005-12-20]

RIN 2120-AA64

Airworthiness Directives; The Lancair Company Model LC41-550FG Airplanes

AGENCY: Federal Aviation Administration (FAA), DOT.

ACTION: Final rule; request for comments.

SUMMARY: The FAA is adopting a new airworthiness directive (AD) for certain The Lancair Company (Lancair) Model LC41-550FG airplanes. This AD requires both visual and dye penetrant inspections of the elevator torque tube assembly for cracks. If a crack is found, this AD requires replacement with a modified assembly that incorporates a steel doubler. This AD also requires replacement of the modified elevator torque tube assembly every 300 hours time-in-service or 18 months (whichever occurs first). This AD results from cracks found in the weld area of the elevator torque tube assembly. We are issuing this AD to detect and correct cracks in the elevator torque tube assembly, which could result in failure of the elevator torque tube assembly and subsequent loss of control of the airplane.

DATES: This AD becomes effective on June 21, 2005.

As of June 21, 2005, the Director of the Federal Register approved the

incorporation by reference of certain publications listed in the regulation.

We must receive any comments on this AD by August 10, 2005.

ADDRESSES: Use one of the following to submit comments on this AD:

- **DOT Docket Web site:** Go to <http://dms.dot.gov> and follow the instructions for sending your comments electronically.

- **Government-wide rulemaking Web site:** Go to <http://www.regulations.gov> and follow the instructions for sending your comments electronically.

- **Mail:** Docket Management Facility; U.S. Department of Transportation, 400 Seventh Street, SW., Nassif Building, Room PL-401, Washington, DC 20590-001.

- **Fax:** 1-202-493-2251.

- **Hand Delivery:** Room PL-401 on the plaza level of the Nassif Building, 400 Seventh Street, SW., Washington, DC, between 9 a.m. and 5 p.m., Monday through Friday, except Federal holidays.

To get the service information identified in this AD, contact The Lancair Company, 22550 Nelson Road, Bend Oregon 97701; telephone: (541) 330-4191; e-mail: product_support@lancair.com.

To view the comments to this AD, go to <http://dms.dot.gov>. The docket number is FAA-2005-21357.

FOR FURTHER INFORMATION CONTACT: Mr. Jeffrey Morfitt, Program Manager, FAA, Seattle Aircraft Certification Office (ACO), 1601 Lind Avenue, SW., Renton, Washington 98055-4065; telephone: (425) 917-6405; facsimile: (425) 917-6590.

SUPPLEMENTARY INFORMATION:

What events have caused this AD? Maintenance personnel found a large crack in the weld area on the elevator torque tube assembly during an elevator disassembly of a Lancair Model LC41-550FG airplane. The airplane had only 54 hours total time-in-service.

This incident prompted an inspection of the elevator torque tube assemblies held in inventory at Lancair. The inspection revealed 70 percent of the factory inventory had cracks.

A combination of design aspects and manufacturing flaws caused the cracks. These flaws lead to rapid fatigue failure of the elevator torque tube assembly.

What is the potential impact if FAA took no action? Cracks in the elevator torque tube assembly could cause the elevator torque tube assembly to fail. This failure could result in loss of control of the airplane.

Is there service information that applies to this subject? Lancair has issued Mandatory Service Bulletin No. SB-05-005A, dated May 20, 2005.

What are the provisions of this service information? The service bulletin includes procedures for inspecting, both visually and with dye penetrant, the elevator torque tube assemblies for cracks. The service bulletin also includes procedures for replacing and reworking cracked elevator torque tube assemblies.

FAA's Determination and Requirements of the AD

What has FAA decided? We have evaluated all pertinent information and identified an unsafe condition that is likely to exist or develop on other products of this same type design.

Since the unsafe condition described previously is likely to exist or develop on other Lancair Model LC41-550FG airplanes of the same type design, we are issuing this AD to prevent failure of the elevator torque tube assembly. This failure could cause loss of control of the airplane.

What does this AD require? This AD requires incorporation of the actions in the previously-referenced service bulletin.

In preparing this rule, we contacted type clubs and aircraft operators to get technical information and information on operational and economic impacts. We did not receive any information through these contacts. If received, we would have included a discussion of any information that may have influenced this action in the rulemaking docket.

How does the revision to 14 CFR part 39 affect this AD? On July 10, 2002, we published a new version of 14 CFR part 39 (67 FR 47997, July 22, 2002), which governs FAA's AD system. This regulation now includes material that relates to altered products, special flight permits, and alternative methods of compliance. This material previously was included in each individual AD. Since this material is included in 14 CFR part 39, we will not include it in future AD actions.

Comments Invited

Will I have the opportunity to comment before you issue the rule? This AD is a final rule that involves requirements affecting flight safety and was not preceded by notice and an opportunity for public comment; however, we invite you to submit any written relevant data, views, or arguments regarding this AD. Send your comments to an address listed under **ADDRESSES**. Include "Docket No. FAA-2005-21357; Directorate Identifier 2005-CE-29-AD" in the subject line of your comments. If you want us to acknowledge receipt of your mailed

comments, send us a self-addressed, stamped postcard with the docket number written on it; we will date-stamp your postcard and mail it back to you. We specifically invite comments on the overall regulatory, economic, environmental, and energy aspects of the rule that might suggest a need to modify it. If a person contacts us through a nonwritten communication, and that contact relates to a substantive part of this AD, we will summarize the contact and place the summary in the docket. We will consider all comments received by the closing date and may amend the AD in light of those comments.

Authority for This Rulemaking

What authority does FAA have for issuing this rulemaking action? Title 49 of the United States Code specifies the FAA's authority to issue rules on aviation safety. Subtitle I, Section 106 describes the authority of the FAA Administrator. Subtitle VII, Aviation Programs, describes in more detail the scope of the agency's authority.

We are issuing this rulemaking under the authority described in Subtitle VII, Part A, Subpart III, Section 44701, "General requirements." Under that section, Congress charges the FAA with promoting safe flight of civil aircraft in air commerce by prescribing regulations for practices, methods, and procedures the Administrator finds necessary for safety in air commerce. This regulation is within the scope of that authority because it addresses an unsafe condition that is likely to exist or develop on products identified in this AD.

Regulatory Findings

Will this AD impact various entities? We have determined that this AD will not have federalism implications under Executive Order 13132. This AD will not have a substantial direct effect on the States, on the relationship between the National Government and the States, or on the distribution of power and responsibilities among the various levels of government.

Will this AD involve a significant rule or regulatory action? For the reasons discussed above, I certify that this AD:

1. Is not a "significant regulatory action" under Executive Order 12866;
2. Is not a "significant rule" under the DOT Regulatory Policies and Procedures (44 FR 11034, February 26, 1979); and
3. Will not have a significant economic impact, positive or negative, on a substantial number of small entities under the criteria of the Regulatory Flexibility Act.

We prepared a summary of the costs to comply with this AD and placed it in

the AD Docket. You may get a copy of this summary by sending a request to us at the address listed under **ADDRESSES**. Include "AD Docket FAA-2005-21357; Directorate Identifier 2005-CE-29-AD" in your request.

List of Subjects in 14 CFR Part 39

Air transportation, Aircraft, Aviation safety, Incorporation by reference, Safety.

Adoption of the Amendment

■ Accordingly, under the authority delegated to me by the Administrator, the Federal Aviation Administration amends part 39 of the Federal Aviation Regulations (14 CFR part 39) as follows:

PART 39—AIRWORTHINESS DIRECTIVES

- 1. The authority citation for part 39 continues to read as follows:

Authority: 49 U.S.C. 106(g), 40113, 44701.

§ 39.13 [Amended]

- 2. The FAA amends § 39.13 by adding the following new airworthiness directive (AD):

2005-12-20 The Lancair Company:

Amendment 39-14136; Docket No. FAA-2005-21357; Directorate Identifier 2005-CE-29-AD.

When Does This AD Become Effective?

- (a) This AD becomes effective on June 21, 2005.

Are Any Other ADs Affected by This Action?

- (b) None.

What Airplanes Are Affected by This AD?

- (c) This AD affects Model LC41-550F airplanes, serial numbers 41001 through 41082, that are certificated in any category.

What Is the Unsafe Condition Presented in This AD?

- (d) This AD results from cracks found in the weld area of the elevator torque tube assembly. We are issuing this AD to detect and correct cracks in the elevator torque tube assembly, which could result in failure of the elevator torque tube assembly and subsequent loss of control of the airplane.

What Must I Do To Address This Problem?

- (e) To address this problem, you must do the following:

Note 1: The Lancair Company Certified Aircraft Mandatory Service Bulletin SB-05-005A, Model 400, dated May 20, 2005, allows the pilot to perform the visual inspection of the elevator torque tube assembly. The Federal Aviation Regulations (14 CFR 43.3) only allow the pilot to perform preventive maintenance as described in 14 CFR part 43, App. A, paragraph (c). These visual inspections are not considered preventive maintenance under 14 CFR part 43, App. A, paragraph (c). Therefore, an appropriately-rated mechanic must perform all actions of this AD.

Actions	Compliance	Procedures
(1) Visually inspect the area of weld joining the torque tube to the elevator end rib for cracks.	Before further flight after June 21, 2005 (the effective date of this AD), and before each flight until the action required in paragraph (e)(2) of this AD is done until a crack is found, whichever occurs first. It is acceptable to do the dye penetrant inspection and modification required in paragraph (e)(2) of this AD before further flight and eliminate the need for the visual inspection(s).	Follow Part 1 of The Lancair Company Certified Aircraft Mandatory Service Bulletin SB-05-005A, Model 400, dated May 20, 2005.
(2) Do a dye penetrant inspection of the area of weld joining the torque tube to the elevator end rib for cracks and modify the elevator torque tube assembly by installing a steel doubler.	Within 10 hours TIS after June 21, 2005 (the effective date of this AD). Doing the dye penetrant inspection and modification terminates the repetitive visual inspection required in paragraph (e)(1) of this AD. This modified elevator torque tube assembly has a safe limit of 300 hours TIS or 18 months after modification, whichever occurs first, and you must replace it at that interval.	Follow Part 2 of The Lancair Company Certified Aircraft Mandatory Service Bulletin SB-05-005A, Model 400, dated May 20, 2005, and Revision B to Chapter 4 of Maintenance Manual RC050001, dated May 25, 2005.
(3) Replace the elevator torque tube assembly with a new assembly that incorporates a steel doubler in the area of weld joining the torque tube to the elevator end rib.	Any time a crack is found during any inspection required in paragraphs (e)(1) and (e)(2) of this AD. You may do the replacement sooner if desired, in which case, you may discontinue the inspections in paragraphs (e)(1) and (e)(2) of this AD. The new replacement assembly has a safe life limit of 300 hours TIS or 18 months after replacement, whichever occurs first, and you must replace it at that interval.	Follow Part 2 of The Lancair Company Certified Aircraft Mandatory Service Bulletin SB-05-005A, Model 400, dated May 20, 2005, and Revision B to Chapter 4 of Maintenance Manual RC050001, dated May 25, 2005.

Note 2: The compliance times in this AD take precedence over the compliance times in the service information.

May I Request an Alternative Method of Compliance?

(f) You may request a different method of compliance or a different compliance time for this AD by following the procedures in 14 CFR 39.19. Unless FAA authorizes otherwise, send your request to your principal inspector. The principal inspector may add comments and will send your request to the Manager, Seattle Aircraft Certification Office, FAA. For information on any already approved alternative methods of compliance, contact Mr. Jeffrey Morfitt, Program Manager, FAA, Seattle Aircraft Certification Office (ACO), 1601 Lind Avenue, SW., Renton, Washington 98055-4065; telephone: (425) 917-6405; facsimile: (425) 917-6590.

Does This AD Incorporate Any Material by Reference?

(g) You must do the actions required by this AD following the instructions in The Lancair Company Certified Aircraft Mandatory Service Bulletin SB-05-005A, Model 400, dated May 20, 2005. The Director of the Federal Register approved the incorporation by reference of this service bulletin in accordance with 5 U.S.C. 552(a) and 1 CFR part 51. To get a copy of this service information, contact The Lancair Company 22550 Nelson Road, Bend Oregon 97701; telephone: (541) 330-4191; e-mail: product_support@lancair.com. To review copies of this service information, go to the National Archives and Records Administration (NARA). For information on the availability of this material at NARA, go to: http://www.archives.gov/federal_register/code_of_federal_regulations/

ibr_locations.html or call (202) 741-6030. To view the AD docket, go to the Docket Management Facility; U.S. Department of Transportation, 400 Seventh Street, SW., Nassif Building, Room PL-401, Washington, DC 20590-001 or on the Internet at <http://dms.dot.gov>. The docket number is FAA-05-21357; Directorate Identifier 2005-CE-29-AD.

Issued in Kansas City, Missouri, on June 10, 2005.

Kim Smith,

Acting Manager, Small Airplane Directorate, Aircraft Certification Service.

[FR Doc. 05-11880 Filed 6-17-05; 8:45 am]

BILLING CODE 4910-13-P

DEPARTMENT OF ENERGY

Federal Energy Regulatory Commission

18 CFR Parts 34 and 131

[Docket No. RM05-11-000; Order No. 657]

Electronic Filing of the Application for Authorization for the Issuance of Securities or the Assumption of Liabilities

May 27, 2005.

AGENCY: Federal Energy Regulatory Commission.

ACTION: Final rule.

SUMMARY: The Federal Energy Regulatory Commission (Commission) is amending its regulations to provide for

electronic filing of Applications for Authorization for the Issuance of Securities or the Assumption of Liabilities. The Commission is making these changes as part of its effort to modernize its reporting and filing requirements and to eliminate unnecessary filing burdens for those entities that file applications or reports with the Commission pursuant to 18 CFR part 34. The proposed revisions will reduce the Commission's and the respondent's costs by allowing the submission of financial information in electronic format in lieu of the present hard copy format; the type of financial data that jurisdictional entities submit in this application is already routinely stored in electronic format, making hard copy filing of such information burdensome. In this Final Rule the Commission continues to move toward electronic filing, as the Government Paperwork Elimination Act mandates.

The modifications in this Final Rule are the result of a review conducted by the Commission's Information Assessment Team (FIAT), identifying the Commission's current information collections, evaluating their original purposes and current uses, and proposing ways to reduce the reporting burden on industry through the elimination, reduction, streamlining or reformatting of current collections.

EFFECTIVE DATE: The rule will become effective at the time of the next e-filing release during the Commission's next fiscal year, *i.e.*, no earlier than October

1, 2005. The Commission will publish an announcement of the effective date in the **Federal Register**.

FOR FURTHER INFORMATION CONTACT:

Patricia Morris (Technical Information), Office of Market Oversight and Investigation, Federal Energy Regulatory Commission, 888 First Street, NE., Washington, DC 20426, (202) 502-8730.

Michael Donnini (Technical Information), Office of Markets, Tariffs and Rates, 888 First Street, NE., Washington, DC 20426, (202) 502-8982.

Joseph C. Lynch (Legal Information), Office of the General Counsel, Federal Energy Regulatory Commission, 888 First Street, NE., Washington, DC 20426, (202) 502-8497.

SUPPLEMENTARY INFORMATION:

Before Commissioners: Pat Wood, III, Chairman; Nora Mead Brownell, Joseph T. Kelliher, and Sueleen G. Kelly.

I. Introduction

1. This Final Rule revises the Commission's regulations found in 18 CFR part 34 and part 131 to require the electronic filing of Applications for Authorization for the Issuance of Securities or the Assumption of Liabilities (FERC-523). The filing is now made entirely in paper format. Commencing with the Commission's next e-filing release, which is presently slated to occur in the Commission's next fiscal year, *i.e.*, no earlier than October 1, 2005, there will be no further requirement for paper filings. Instead, jurisdictional entities will submit their filings in electronic format.

2. This rulemaking yields significant benefits to the respondents and the Commission. These benefits include a reduction in filers' printing and handling costs and a reduction in the Commission's processing and maintenance costs. The move to electronic filing also helps achieve the Commission's goal of vigilant oversight by providing the Commission with more timely and usable information.

II. Background

3. Under Federal Power Act (FPA) section 204, 16 U.S.C. 824c, no public utility or licensee shall issue any security, or assume any obligation or liability as guarantor, endorser, surety, or otherwise in respect of any security of another person, unless and until, upon application by the public utility, the Commission by order authorizes the issuance of the securities or the assumption of the liability. The Commission implements this statute through its regulations, which are found at 18 CFR part 34; sections 131.43 and 131.50 of 18 CFR part 131 prescribe the required format for the filings.

4. FERC-523 collects the following: a description of the securities that the company proposes to issue, the purpose of the securities, whether or not the company will file any part of the application with any state, a detailed statement of the facts upon which the applicant relies, a statement of the bond indentures or other limitations on interest and dividend coverage, the effects of such limitations on the issuance of additional debt or equity securities, and a brief statement of any rate changes made effective during the subject period. The Commission uses this information to determine whether to approve an application for authorization to issue securities or to assume an obligation or liability by the public utilities and their licensees who make these applications. The Commission receives about sixty applications annually.

III. Discussion

5. In this Final Rule, the Commission is eliminating the requirement to make paper submissions of FERC-523, and to substitute a requirement to file FERC-523 electronically.

6. Current filing regulations for FERC-523 require the respondents to make paper submissions, which the Commission then scans into its document management system (the

Commission's Electronic Library (eLibrary)). The scanned filing is converted to PDF format. Those wishing to view the filed information can access and view it through eLibrary; all publicly-available documents are viewable in eLibrary. Currently, most of the FERC-523 submissions, while filed as hardcopy, are originally created by electronic means and are thus already in an electronic format. Allowing submitters to "eFile" reduces the burden of converting an electronic document into a paper submission which the Commission then converts back to an electronic document; and eliminates the cost of sending paper submissions, the Commission's elimination of the FERC-523 paper submissions should benefit those making such filings and should not have an adverse impact on information users.

7. This Final Rule is part of the Commission's efforts to revise and streamline its existing reporting requirements, reduce the filing burden on reporting companies, and meet the requirements of the Government Paperwork Elimination Act of 1998, 44 U.S.C. 35.

IV. Information Collection Statement

8. The Office of Management and Budget's (OMB) regulations require OMB to approve certain information collection requirements imposed by agency rule.¹ Comments are solicited on the Commission's need for this information, whether the information will have practical utility, the accuracy of the provided burden estimates, ways to enhance the quality, utility and clarity of the information to be collected, and any suggested methods for minimizing respondents' burden, including the use of automated information techniques.

V. Estimated Annual Burden

9. The current reporting burden for this information collection is as follows:

Data collection	Number of respondents	Number of responses	Number of hours per response	Total annual hours
FERC-523	60	1	110	6,600
Totals	6,600

The Commission expects a burden reduction of 22 hours per response as a result of the electronic filing implementation. This reduces total

annual hours to 5,280, a reduction of 1320 hours annually.

Title: Application for Authorization of the Issuance of Securities or the Assumption of Liabilities (FERC-523).

¹ 5 CFR 1320.11.

Action: Electronic Filing of Information.

OMB Control No. 1902–0043.

Respondents: Businesses or other for profit.

Frequency of Responses: Occasional.

Necessity of the information: This Final Rule will revise the filing requirements for applications for Commission authorization to issue securities or to assume liabilities, to require the electronic filing of this information and thus reducing the burden on respondents and allowing more expeditious analysis by the Commission (and others). The information filed with the Commission is used to make a determination to grant or deny authorization to issue securities or to assume a liability. By assessing this information, the Commission can evaluate the financial health of the company and the potential impact on current and future ratepayers.

Internal Review: The Commission has reviewed the proposed amendments to its regulations to modify the filing method and standardize the format. The revisions to the regulations will provide more effective and efficient information by providing current data by electronic submission. This method of filing will reduce data errors and thus preserve the integrity of the data. The Commission will be able to conduct further analysis of filed data in a more timely fashion and provide a more timely response. The Commission has assured itself, by means of internal review, that there is specific, objective support for the burden estimates associated with the information collection requirements.

10. Interested persons may obtain information on the information requirements by contacting the following: The Federal Energy Regulatory Commission, 888 First Street, NE., Washington, DC 20426 [Attention: Michael Miller, Office of the Executive Director, ED–33, Phone (202) 502–8415, Fax: (202) 273–0873, e-mail: michael.miller@ferc.gov.]

11. To submit comments concerning the collection of information(s) and the associated burden estimate(s), please send your comments to the contact listed above and to the Office of Management and Budget, Office of Information and Regulatory Affairs, Washington, DC 20503, [Attention: Desk Officer for the Federal Energy Regulatory Commission, phone: (202) 395–4650, fax: (202) 395–7285].

VI. Regulatory Flexibility Act Certification

12. The Regulatory Flexibility Act (RFA) requires rulemakings to contain either a description and analysis of the

effect that the rule will have on small entities or to contain a certification that the rule will not have a significant economic impact on a substantial number of small entities.²

13. The Commission concludes that this rule would not have such an impact on small entities. Most public utilities to which the Final Rule would apply do not fall within the RFA's definition of a small entity.³ Further, electronic filing would not be a significant burden since the filing is typically prepared in an electronic format in the first place. Consequently, the Commission certifies that this Final Rule will not have "a significant economic impact on a substantial number of small entities."

VII. Environmental Analysis

14. The Commission is required to prepare an Environmental Assessment or an Environmental Impact Statement for any action that may have a significant adverse effect on the human environment.⁴ The Commission has categorically excluded certain actions from these requirements as not having a significant effect on the human environment.⁵ The actions proposed to be taken here fall within the categorical exclusions in the Commission's regulations for rules that involve information gathering, analysis, and dissemination⁶ and that involve issuances of securities and assumptions of liabilities. Therefore, an environmental assessment is unnecessary and has not been prepared for this rulemaking.

VIII. Document Availability

15. In addition to publishing the full text of this document in the **Federal Register**, the Commission provides all interested persons an opportunity to view and/or print the contents of this

² 5 U.S.C. 601–12.

³ 5 U.S.C. 601(3), citing to section 3 of the Small Business Act, 15 U.S.C. 632. Section 3 of the Small Business Act defines a "small-business concern" as a business which is independently owned and operated and which is not dominant in its field of operation. In addition, the RFA definition of "small entity" refers to the definition provided in the Small Business Act, which defines a "small business concern" as a business that is independently owned and operated and that is not dominant in its field of operation. 15 U.S.C. 632. The Small Business Size Standards component of the North American Industry Classification System defines a small electric utility as one that, including its affiliates, is primarily engaged in the generation, transmission, and/or distribution of electric energy for sale and whose total electric output for the preceding fiscal year did not exceed 4 million MWh. 13 CFR 121.201.

⁴ *Regulations Implementing the National Environmental Policy Act*, Order No. 486, 52 FR 47897 (Dec. 17, 1987), FERC Stats. & Regs. ¶ 30,783 (1987).

⁵ 18 CFR 380.4(a)(2)(ii).

⁶ 18 CFR 380.4(a)(5).

document via the Internet through the Commission's Home Page (<http://www.ferc.gov>) and in the Commission's Public Reference Room during normal business hours (8:30 a.m. to 5 p.m. eastern time) at 888 First Street, NE., Room 2A, Washington DC 20426.

16. From the Commission's Home Page on the Internet, this information is available in eLibrary. The full text of this document is available in the eLibrary both in PDF and Microsoft Word format for viewing, printing, and/or downloading. To access this document in eLibrary, type the docket number, excluding the last three digits of this document, in the docket number field.

17. User assistance is available for eLibrary and the Commission's Web site during normal business hours. For assistance contact FERC Online Support at FERCOnlineSupport@ferc.gov or toll-free at (866) 208–3676, or for TTY, contact (202) 502–8659. E-Mail the Public Reference Room at public.referenceroom@ferc.gov or (202) 502–8371.

IX. Effective Date And Congressional Notification

18. This Final Rule will take effect commencing with the Commission's next e-filing release, which is presently slated to occur in the Commission's next fiscal year, *i.e.*, no earlier than October 1, 2005. The Commission has determined, with the concurrence of the Administrator of the Office of Information and Regulatory Affairs of the Office of the Management and Budget that this rule is not a major rule within the meaning of section 251 of the Small Business Regulatory Enforcement Fairness Act of 1996.⁷ The Commission will submit the Final Rule to both Houses of Congress and the General Accountability Office.⁸

List of Subjects

18 CFR Part 34

Statements, Reporting and recordkeeping requirements.

List of Subjects

18 CFR Part 131

Forms, Reporting and recordkeeping requirements.

By the Commission.

Linda Mitry,
Deputy Secretary.

■ In consideration of the foregoing, the Commission amends Parts 34 and 131, Chapter I, Title 18 of the *Code of Federal Regulations*, as follows:

⁷ See 5 U.S.C. 804(2).

⁸ See 5 U.S.C. 801(a)(1)(A).

PART 34—APPLICATION FOR AUTHORIZATION OF THE ISSUANCE OF SECURITIES OR THE ASSUMPTION OF LIABILITIES

■ 1. The authority citation for Part 34 continues to read as follows:

Authority: 16 U.S.C. 791a–825r, 2601–2645; 31 U.S.C. 9701; 42 U.S.C. 7101–7352.

■ 2. Section 34.7 is revised to read as follows:

§ 34.7 Filing requirements.

Each applicant shall submit to this Commission an electronic version of each application pursuant to this part 34. The electronic version shall be considered a “qualified document” in accordance with § 385.2003(c)(1) and (2) of this chapter. As a qualified document, no paper copy version of the filing is required unless there is a request for privileged or protected treatment or the document is combined with another document as provided in § 385.2003(c)(3) or (4). Submit each application in electronic format in accordance with § 385.2003.

■ 3. Section 34.8 is revised to read as follows:

§ 34.8 Verification.

An application verification shall be signed under oath by an authorized representative of the applicant, who has knowledge of the matters set forth therein and as provided in § 385.2005 of this chapter, and retained at the applicant’s business location until the relevant proceeding has been concluded.

■ 4. Section 34.9 is revised to read as follows:

§ 34.9 Filing fee.

Each application shall be accompanied by the submission of a filing fee if one is prescribed in part 381 of this chapter.

PART 131—FORMS

■ 5. The authority citation for Part 131 continues to read as follows:

Authority: 16 U.S.C. 791a–825r, 2601–2645; 31 U.S.C. 9701; 42 U.S.C. 7101–7352.

■ 6. Section 131.43 introductory text is revised to read as follows:

§ 131.43 Report of securities issued.

(See § 34.10 of this chapter)
(Submit in electronic format in accordance with § 385.2003 of this chapter.)

* * * * *

■ 7. Section 131.50(a) and (b) is revised to read as follows:

§ 131.50 Report of proposals received.

(a) No later than 30 days after the sale or placement of long-term debt or equity securities or the entry into guarantees or assumptions of liabilities (collectively referred to as “placement”) pursuant to authority granted under Part 34 of this chapter, the applicant must file, in electronic format, a summary of each proposal or proposals received for the placement. The proposal or proposals accepted must be indicated. The information to be filed must include:

- (1) Par or stated value of securities;
- (2) Number of units (shares of stock, number of bonds) issued;
- (3) Total dollar value of the issue;
- (4) Life of the securities, including maximum life and average life of sinking fund issue;
- (5) Dividend or interest rate;
- (6) Call provisions;
- (7) Sinking fund provisions;
- (8) Offering price;
- (9) Discount or premium;
- (10) Commission or underwriter’s spread;
- (11) Net proceeds to company for each unit of security and for the total issue;
- (12) Net cost to the company for securities with a stated interest or dividend rate.

(b) This report must be filed with the Commission as prescribed in § 385.2003 of this chapter and as indicated in the instructions set out in this report. This report is an electronic file that is classified as a “qualified document” in accordance with § 385.2003(c)(1) and (2). As a qualified document, no paper copy version of the filing is required unless there is a request for privileged or protected treatment or the document is combined with another document as provided in § 385.2003(c)(3) or (4).

* * * * *

[FR Doc. 05–12063 Filed 6–17–05; 8:45 am]

BILLING CODE 6717–01–P

DEPARTMENT OF COMMERCE

Patent and Trademark Office

37 CFR Part 1

[Docket No.: 2005–P–052]

RIN 0651–AB84

Revision of Search and Examination Fees for Patent Cooperation Treaty Applications Entering the National Stage in the United States

AGENCY: United States Patent and Trademark Office, Commerce.

ACTION: Final rule.

SUMMARY: Among other changes to patent and trademark fees, the

Consolidated Appropriations Act, 2005 (Consolidated Appropriations Act), splits the national fee for Patent Cooperation Treaty (PCT) applications entering the national stage into a separate national fee, search fee and examination fee, during fiscal years 2005 and 2006. The United States Patent and Trademark Office (Office) is reducing the search fee and examination fee for certain PCT applications entering the national stage.

DATES: *Effective date:* July 1, 2005.

Applicability Date: The changes in this final rule apply to any search fee paid on or after July 1, 2005, and to any examination fee paid on or after July 1, 2005, in an international application entering the national stage under 35 U.S.C. 371 for which the basic national fee specified in 35 U.S.C. 41 was paid on or after December 8, 2004.

FOR FURTHER INFORMATION CONTACT: Robert W. Bahr, Senior Patent Attorney, Office of the Deputy Commissioner for Patent Examination Policy, by telephone at (571) 272–8800, by mail addressed to: Mail Stop Comments—Patents, Commissioner for Patents, P.O. Box 1450, Alexandria, VA, 22313–1450, or by facsimile to (571) 273–7735, marked to the attention of Robert W. Bahr.

SUPPLEMENTARY INFORMATION: The Consolidated Appropriations Act (section 801 of Division B) provides that 35 U.S.C. 41(a), (b), and (d) shall be administered in a manner that revises patent application fees (35 U.S.C. 41(a)) and patent maintenance fees (35 U.S.C. 41(b)), and provides for a separate filing or national fee (35 U.S.C. 41(a)), search fee (35 U.S.C. 41(d)(1)), and examination fee (35 U.S.C. 41(a)(3)) during fiscal years 2005 and 2006. *See* Pub. L. 108–447, 118 Stat. 2809 (2004). The Consolidated Appropriations Act provides a fee of \$500.00 for the search of the national stage of each international application (Section 803(c)(1) of Division B) and a fee of \$200.00 for the examination of the national stage of each international application (35 U.S.C. 41(a)(3)(D)) during fiscal years 2005 and 2006.

35 U.S.C. 376 provides that: “[t]he Director may also refund any part of the search fee, the national fee, the preliminary examination fee and any additional fees, where he determines such refund to be warranted.” *See* 35 U.S.C. 376(b). Under the authority provided in 35 U.S.C. 376: (1) The Office will refund the entire search fee if an international preliminary examination report on the international application prepared by the United States International Preliminary Examining Authority or a written

opinion on the international application prepared by the United States International Searching Authority states that the criteria of novelty, inventive step (non-obviousness), and industrial applicability, as defined in PCT Article 33(1) to (4) (PCT Article 33(1) to (4) criteria) have been satisfied for all of the claims presented in the application entering the national stage; (2) the Office will refund the entire search fee less \$100.00 (\$50.00 for small entities) if the search fee as set forth in § 1.445(a)(2) has been paid on the international application to the United States Patent and Trademark Office as an International Searching Authority; and (3) the Office will refund \$100.00 (\$50.00 for small entities) if an international search report on the international application has been prepared by an International Searching Authority other than the United States International Searching Authority and is provided to the Office no later than the time at which the search fee is paid. In addition, under the authority provided in 35 U.S.C. 376, the Office will refund the entire examination fee if an international preliminary examination report on the international application prepared by the United States International Preliminary Examining Authority or a written opinion on the international application prepared by the United States International Searching Authority states that the PCT Article 33(1) to (4) criteria have been satisfied for all of the claims presented in the application entering the national stage.

Discussion of Specific Rules

Title 37 of the Code of Federal Regulations, Part 1, is amended as follows:

Section 1.492: Section 1.492(b) sets forth the search fees for an international application entering the national stage under 35 U.S.C. 371. Section 1.492(b)(1) provides that the search fee for an international application entering the national stage under 35 U.S.C. 371 is \$0.00 (small or non-small entity), if an international preliminary examination report on the international application prepared by the United States International Preliminary Examining Authority or a written opinion on the international application prepared by the United States International Searching Authority states that the PCT Article 33(1) to (4) criteria have been satisfied for all of the claims presented in the application entering the national stage. Section 1.492(b)(2) provides that the search fee for an international application entering the national stage under 35 U.S.C. 371 is \$100.00 (\$50.00

for a small entity) if the search fee as set forth in § 1.445(a)(2) has been paid on the international application to the United States Patent and Trademark Office as an International Searching Authority. Section 1.492(b)(3) provides that the search fee for an international application entering the national stage under 35 U.S.C. 371 is \$400.00 (\$200.00 for a small entity) if an international search report on the international application has been prepared by an International Searching Authority other than the United States International Searching Authority and is provided to the Office. If the search fee is paid in the amount specified in § 1.492(b)(3) on the date of the commencement of the national stage (§ 1.491(a)), but an international search report on the international application prepared by an International Searching Authority other than the United States International Searching Authority is provided to the Office after the date of the commencement of the national stage, the surcharge under § 1.492(h) for filing any of the search fee, the examination fee, or the oath or declaration after the date of the commencement of the national stage (if applicable) will be due because the application was not entitled to the search fee specified in § 1.492(b)(3) on the date of the commencement of the national stage. Section 1.492(b)(4) provides that the search fee for an international application entering the national stage under 35 U.S.C. 371 is \$500.00 (\$250.00 for a small entity) in all other situations.

Section 1.492(c) sets forth the examination fee for an international application entering the national stage under 35 U.S.C. 371. Section 1.492(c)(1) provides that the examination fee for an international application entering the national stage under 35 U.S.C. 371 is \$0.00 (small or non-small entity), if an international preliminary examination report on the international application prepared by the United States International Preliminary Examining Authority or a written opinion on the international application prepared by the United States International Searching Authority states that the PCT Article 33(1) to (4) criteria have been satisfied for all of the claims presented in the application entering the national stage. Section 1.492(c)(2) provides that the examination fee for an international application entering the national stage under 35 U.S.C. 371 is \$200.00 (\$100.00 for a small entity) in all other situations.

Section 1.496: Section 1.496(b) is amended to revise its references to § 1.492 to reflect the changes in § 1.492 by which national stage applications having paid therein the search fee as set

forth in § 1.492(b)(1) and the examination fee as set forth in § 1.492(c)(1) may be amended subsequent to the date of entry into the national stage only to the extent necessary to eliminate objections as to form or to cancel rejected claims. Section 1.496(b) is also amended to provide that such national stage applications will be advanced out of turn for examination (rather than taken up out of order).

Response to comments: The Office published an interim rule revising search and examination fees for international applications entering the national stage in the United States and inviting comments on the revised search and examination fees. *See Revision of Search and Examination Fees for Patent Cooperation Treaty Applications Entering the National Stage in the United States*, 70 FR 5053 (Feb. 1, 2005), 1292 *Off. Gaz. Pat. Office* 21 (Mar. 1, 2005) (interim rule). The Office received three written comments (from an intellectual property organization, and patent practitioners) in response to this notice. The comments and the Office's responses to the comments follow:

Comment 1: One comment suggested that there should be greater search fee and examination fee reductions for applications entering the national stage in the United States with an international search report and international preliminary examination report provided by the United States Patent and Trademark Office acting as an International Searching Authority and International Preliminary Examining Authority, especially where an international preliminary examination report is positive, and for applications entering the national stage in the United States with an international search report and international preliminary examination report provided by other offices acting as an International Searching Authority. The comment argued that such greater fee reductions would be consistent with the greater fee reductions for such applications provided by 35 U.S.C. 41(a) prior to enactment of the Consolidated Appropriations Act, would encourage applicants to use the PCT system, and would further the implementation of the United States Patent and Trademark Office 21st Century Strategic Plan.

Response: The Office will reduce the search fee to \$0.00 and the examination fee to \$0.00 where an international preliminary examination report on the international application prepared by the United States International Preliminary Examining Authority or a written opinion on the international

application prepared by the United States International Searching Authority states that the PCT Article 33(1) to (4) criteria have been satisfied for all of the claims presented in the application entering the national stage (§ 1.496(b)). The Office considers a search fee reduction to \$100.00 (\$50.00 for a small entity) for other applications entering the national stage in the United States with an international search report provided by the United States Patent and Trademark Office acting as an International Searching Authority to be appropriate. This search fee reduction (to \$100.00, or \$50.00 for a small entity) is significant, and the Office will be required to conduct additional searching during the course of examining an international application in which the PCT Article 33(1) to (4) criteria have not been satisfied for all of the claims presented in the application entering the national stage.

The Office reduced the search fee to \$400.00 (\$200.00 for a small entity) for applications entering the national stage in the United States with an international search report provided by an International Searching Authority other than the United States Patent and Trademark Office. The United States Patent and Trademark Office 21st Century Strategic Plan contemplates significant national stage search fee reductions for international applications in which the international search report was done by an intellectual property authority with which the United States Patent and Trademark Office has a multilateral or bilateral search exchange agreement. The multilateral or bilateral search exchange agreements contemplated by the United States Patent and Trademark Office 21st Century Strategic Plan, however, are not currently in place. Therefore, a greater reduction in the search fee for applications entering the national stage in the United States with an international search report provided by an International Searching Authority other than the United States Patent and Trademark Office is not warranted at this time.

Comment 2: One comment noted that the search fees and examination fees in § 1.492 appear to apply only to international applications entering the national stage in the United States under 35 U.S.C. 371. The comment questioned whether the reduced search fees would also apply to a continuation application filed under 35 U.S.C. 111(a) of an international application (*i.e.*, a bypass continuation application), or a continuation application filed under 35 U.S.C. 111(a) of an international application that entered the national

stage in the United States under 35 U.S.C. 371.

Response: The search fees and examination fees in § 1.492 apply only to international applications entering the national stage in the United States under 35 U.S.C. 371. The search fees and examination fees in § 1.492 do not apply to any application filed under 35 U.S.C. 111(a), including continuation applications of an international application (*i.e.*, a bypass continuation application), or continuation applications of an international application that entered the national stage in the United States under 35 U.S.C. 371.

Comment 3: One comment noted that § 1.492(c)(1) provides a reduced examination fee where the international preliminary examination report satisfies PCT Article 33(1) to (4) criteria for an application entering the national stage, but contends that the Office frequently delays issuance of the international preliminary examination report until after thirty months from the priority date, which effectively nullifies the examination reduction. The comment suggested revising § 1.492(c)(1) by also providing this reduced examination fee for applications entering the U.S. national stage where the international preliminary examination report is overdue.

Response: If the Office delays issuance of the international preliminary examination report until after thirty months from the priority date, and the international preliminary examination report states that the PCT Article 33(1) to (4) criteria have been satisfied for all of the claims presented in the application entering the national stage, the applicant may request a refund of the search fee and the examination fee. The Office will grant such a request for refund, however, only where the delay in issuance of the international preliminary examination report was the Office's fault (*e.g.*, the Office will not grant a refund where the delay was due to applicant delays, or delays by another International Searching Authority).

Comment 4: One comment noted that § 1.496(b) appears to prohibit formal changes which may be necessary, and does not specify any specific time frame within which the application must be taken up for examination. The comment suggested revising § 1.496 to permit changes to the application except for the claims, and provide that such applications will be taken up within three months of completion of the requirements of § 1.495(b) and (c).

Response: The Office did not propose substantive changes to § 1.496(b). The

Office will revise § 1.496(b) to indicate that such national stage applications "will be advanced out of turn for examination." The Office will also consider the suggestion to amend § 1.496(b) to permit additional changes to the application in a future rule making.

Rule Making Considerations

Administrative Procedure Act: Nothing in this or any other law requires delayed implementation of the fee reductions in this final rule. Pursuant to its authority under 35 U.S.C. 376(b), the Office has reduced the patent fees set forth in § 1.492 to less than the amount specified in 35 U.S.C. 41. Existing rights and obligations are not otherwise changed. It is in the public interest to implement the reduced search and examination fees without delay because delay in the adoption of these fee reductions would cause harm to those applicants who currently meet the conditions for entitlement to a fee reduction. Otherwise, applicants who are currently filing search and examination fees in order to avoid abandonment of their applications will be unnecessarily paying higher search and examination fees. The Office believes the public wants these new reduced fees to become effective as soon as possible as the public should benefit from the efficiencies and savings resulting therefrom. In addition, the Office does not believe the public needs time to conform its conduct so as to avoid violation of these regulations. In order to give the public the benefit of the Office's decision to reduce specified search and examination fees without delay, the Office finds, pursuant to the authority provided at 5 U.S.C. 553(d), good cause to adopt this change without thirty-day advance publication as such a delay would be contrary to the public interest.

35 U.S.C. 41(g) provides that: "[n]o fee established by the Director under [35 U.S.C. 41]; shall take effect until at least 30 days after notice of the fee has been published in the **Federal Register** and in the Official Gazette of the Patent and Trademark Office." Since the reduced search fees and examination fees specified in § 1.492(b) and (c) are established by the Office on the basis of the Office's authority under 35 U.S.C. 376(b) (rather than the authority in 35 U.S.C. 41), the thirty-day advance publication requirement of 35 U.S.C. 41(g) does not apply to the reduced search fees and examination fees specified in § 1.492(b) and (c).

Accordingly, the changes in this final rule may be adopted without thirty-day

advance publication under 5 U.S.C. 553(d) or 35 U.S.C. 41(g).

Regulatory Flexibility Act: The Deputy General Counsel for General Law of the United States Patent and Trademark Office certifies to the Chief Counsel for Advocacy of the Small Business Administration that this final rule, Revision of Search and Examination Fees for Patent Cooperation Treaty Applications Entering the National Stage in the United States (RIN 0651-AB84), will not have a significant economic impact on a substantial number of small entities. See 5 U.S.C. 605(b). Pursuant to its authority under 35 U.S.C. 376(b), the Office is reducing the patent fees set forth in § 1.492 to less than the amount specified in 35 U.S.C. 41. The changes in this final rule will not impose any additional fees or requirements on any patent applicant. Rather, the changes in this final rule would eliminate search and examination fees for patent applicants (for both small and non-small entities) in specific situations where the Office performed the search and/or examination at the international stage of the PCT application.

Executive Order 13132: This rule making does not contain policies with federalism implications sufficient to warrant preparation of a Federalism Assessment under Executive Order 13132 (Aug. 4, 1999).

Executive Order 12866: This rule making has been determined to be not significant for purposes of Executive Order 12866 (Sept. 30, 1993).

Paperwork Reduction Act: This final rule involves information collection requirements that are subject to review by the Office of Management and Budget (OMB) under the Paperwork Reduction Act of 1995 (44 U.S.C. 3501 *et seq.*). The collection of information involved in this final rule has been reviewed and previously approved by OMB under the following control number: 0651-0021. The Office is not resubmitting an information collection package to OMB for its review and approval because the changes in this final rule do not affect the information collection requirements associated with the information collection under this OMB control number.

Interested persons are requested to send comments regarding this information collection, including suggestions for reducing this burden, to Robert J. Spar, Director, Office of Patent Legal Administration, United States Patent and Trademark Office, P.O. Box 1450, Alexandria, VA, 22313-1450, or to the Office of Information and Regulatory Affairs of OMB, New Executive Office Building, 725 17th

Street, NW., Room 10235, Washington, DC 20503, Attention: Desk Officer for the United States Patent and Trademark Office.

Notwithstanding any other provision of law, no person is required to respond to nor shall a person be subject to a penalty for failure to comply with a collection of information subject to the requirements of the Paperwork Reduction Act unless that collection of information displays a currently valid OMB control number.

List of Subjects

37 CFR Part 1

Administrative practice and procedure, Courts, Freedom of Information, Inventions and patents, Reporting and record keeping requirements, Small Businesses.

■ For the reasons set forth in the preamble, the interim rule amending 37 CFR Part 1 which was published at 70 FR 5053-5056 on February 1, 2005, is adopted as final with the following changes:

PART 1—RULES OF PRACTICE IN PATENT CASES

■ 1. The authority citation for 37 CFR Part 1 continues to read as follows:

Authority: 35 U.S.C. 2(b)(2).

■ 2. Section 1.492 is amended by revising paragraphs (b) and (c) to read as follows:

§ 1.492 National stage fees.

* * * * *

(b) Search fee for an international application entering the national stage under 35 U.S.C. 371 if the basic national fee was not paid before December 8, 2004:

(1) If an international preliminary examination report on the international application prepared by the United States International Preliminary Examining Authority or a written opinion on the international application prepared by the United States International Searching Authority states that the criteria of novelty, inventive step (non-obviousness), and industrial applicability, as defined in PCT Article 33(1) to (4) have been satisfied for all of the claims presented in the application entering the national stage:

By a small entity (§ 1.27(a))	\$0.00
By other than a small entity	\$0.00

(2) If the search fee as set forth in § 1.445(a)(2) has been paid on the international application to the United States Patent and Trademark Office as an International Searching Authority:

By a small entity (§ 1.27(a))	\$50.00
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By other than a small entity	\$100.00
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(3) If an international search report on the international application has been prepared by an International Searching Authority other than the United States International Searching Authority and is provided, or has been previously communicated by the International Bureau, to the Office:

By a small entity (§ 1.27(a))	\$200.00
By other than a small entity	\$400.00

(4) In all situations not provided for in paragraphs (b)(1), (b)(2), or (b)(3) of this section:

By a small entity (§ 1.27(a))	\$250.00
By other than a small entity	\$500.00

(c) The examination fee for an international application entering the national stage under 35 U.S.C. 371 if the basic national fee was not paid before December 8, 2004:

(1) If an international preliminary examination report on the international application prepared by the United States International Preliminary Examining Authority or a written opinion on the international application prepared by the United States International Searching Authority states that the criteria of novelty, inventive step (non-obviousness), and industrial applicability, as defined in PCT Article 33(1) to (4) have been satisfied for all of the claims presented in the application entering the national stage:

By a small entity (§ 1.27(a))	\$0.00
By other than a small entity	\$0.00

(2) In all situations not provided for in paragraph (c)(1) of this section:

By a small entity (§ 1.27(a))	\$100.00
By other than a small entity	\$200.00

* * * * *

■ 3. Section 1.496 is amended by revising paragraph (b) to read as follows:

§ 1.496 Examination of international applications in the national stage.

* * * * *

(b) National stage applications having paid therein the search fee as set forth in § 1.492(b)(1) and the examination fee as set forth in § 1.492(c)(1) may be amended subsequent to the date of entry into the national stage only to the extent necessary to eliminate objections as to form or to cancel rejected claims. Such national stage applications will be advanced out of turn for examination.

Date: June 10, 2005.

Jon W. Dudas,

Under Secretary of Commerce for Intellectual Property and Director of the United States Patent and Trademark Office.

[FR Doc. 05-12087 Filed 6-17-05; 8:45 am]

BILLING CODE 3510-16-P

ENVIRONMENTAL PROTECTION AGENCY**40 CFR Part 52**

[R03–OAR–2005–VA–0008; FRL–7925–6]

Approval and Promulgation of Air Quality Implementation Plans; Virginia; VOC Emission Standards in the Hampton Roads VOC Emissions Control Area**AGENCY:** Environmental Protection Agency (EPA).**ACTION:** Direct final rule.

SUMMARY: EPA is taking direct final action to approve a revision to the Commonwealth of Virginia State Implementation Plan (SIP). This revision consists of the removal of the exemption from volatile organic compound (VOC) emission standards for sources located in the Hampton Roads VOC Emissions Control Area localities of James City County, York County, Poquoson City, and Williamsburg City. This action is necessary in order for Virginia to meet its obligation to implement contingency measures as a result of the area's violation of the 1-hour ozone standard. This action is being taken in accordance with the requirements of the Clean Air Act.

DATES: This rule is effective on August 19, 2005 without further notice, unless EPA receives adverse written comment by July 20, 2005. If EPA receives such comments, it will publish a timely withdrawal of the direct final rule in the **Federal Register** and inform the public that the rule will not take effect.

ADDRESSES: Submit your comments, identified by Regional Material in EDocket (RME) ID Number R03–OAR–2005–VA–0008, by one of the following methods:

A. Federal eRulemaking Portal: <http://www.regulations.gov>. Follow the on-line instructions for submitting comments.

B. Agency Web site: <http://www.docket.epa.gov/rmepub/> RME, EPA's electronic public docket and comment system, is EPA's preferred method for receiving comments. Follow the on-line instructions for submitting comments.

C. E-mail: campbell.dave@epa.gov.

D. Mail: R03–OAR–2005–VA–0008, David Campbell, Chief, Air Quality Planning Branch, Mailcode 3AP21, U.S. Environmental Protection Agency, Region III, 1650 Arch Street, Philadelphia, Pennsylvania 19103.

E. Hand Delivery: At the previously-listed EPA Region III address. Such

deliveries are only accepted during the Docket's normal hours of operation, and special arrangements should be made for deliveries of boxed information.

Instructions: Direct your comments to RME ID No. R03–OAR–2005–VA–0008. EPA's policy is that all comments received will be included in the public docket without change, and may be made available online at <http://www.docket.epa.gov/rmepub/>, including any personal information provided, unless the comment includes information claimed to be Confidential Business Information (CBI) or other information whose disclosure is restricted by statute. Do not submit information that you consider to be CBI or otherwise protected through RME, [regulations.gov](http://www.regulations.gov) or e-mail. The EPA RME and the Federal [regulations.gov](http://www.regulations.gov) websites are an "anonymous access" system, which means EPA will not know your identity or contact information unless you provide it in the body of your comment. If you send an e-mail comment directly to EPA without going through RME or [regulations.gov](http://www.regulations.gov), your e-mail address will be automatically captured and included as part of the comment that is placed in the public docket and made available on the Internet. If you submit an electronic comment, EPA recommends that you include your name and other contact information in the body of your comment and with any disk or CD-ROM you submit. If EPA cannot read your comment due to technical difficulties and cannot contact you for clarification, EPA may not be able to consider your comment. Electronic files should avoid the use of special characters, any form of encryption, and be free of any defects or viruses.

Docket: All documents in the electronic docket are listed in the RME index at <http://www.docket.epa.gov/rmepub/>. Although listed in the index, some information is not publicly available, i.e., CBI or other information whose disclosure is restricted by statute. Certain other material, such as copyrighted material, is not placed on the Internet and will be publicly available only in hard copy form. Publicly available docket materials are available either electronically in RME or in hard copy during normal business hours at the Air Protection Division, U.S. Environmental Protection Agency, Region III, 1650 Arch Street, Philadelphia, Pennsylvania 19103. Copies of the State submittal are available at the Virginia Department of Environmental Quality, 629 East Main Street, Richmond, Virginia 23219.

FOR FURTHER INFORMATION CONTACT: Ellen Wentworth, (215) 814–2034, or by e-mail at wentworth.ellen@epa.gov.

SUPPLEMENTARY INFORMATION:**I. Background**

On February 22, 2005, the Commonwealth of Virginia submitted a formal revision to its SIP. This SIP revision consists of the removal of the exemption from VOC emission standards for sources located in the Hampton Roads VOC Emissions Control Area localities of James City County, York County, Poquoson City, and Williamsburg City. Sources of VOC emissions in these localities will now be required to meet the emission standards set forth in Chapter 40 of the Regulations for Control and Abatement of Air Pollution. This action is necessary in order for Virginia to implement contingency measures specified in the maintenance plan established for Hampton Roads. The Hampton Roads Area was designated attainment for the 1-hour ozone standard on June 26, 1997 (62 FR 34408), but subsequently violated the standard between 1999 and 2001.

II. Summary of SIP Revision

The Hampton Roads Area, consisting of the localities of James City County, Poquoson City, York County, Portsmouth City, Chesapeake City, Suffolk City, Hampton City, Virginia Beach City, Newport News City, Williamsburg City, and Norfolk City, was classified as a marginal nonattainment area in 1991 (56 FR 56694). The Area was able to achieve the 1-hour ozone standard and was designated attainment for the 1-hour standard on June 26, 1997 (62 FR 34408). The maintenance plan submitted and approved at the time of the redesignation included specific strategies aimed at maintaining air quality and contingency measures in the event the Area measured ozone concentrations above allowable levels. One of the potential measures available was to remove the exemption to meet existing VOC standards provided to sources located in the Hampton Roads Area localities of James City County, York County, Poquoson City, and Williamsburg City. Since the initial promulgation of the VOC emissions control areas in 1979, these four localities had been exempt from meeting the VOC emission standards in 9 VAC–5–40–10, *et seq.* At the time, they were considered to be too rural to make a significant contribution to air pollution in the area. However, due to growth in the area, these localities can no longer be considered rural.

As stated previously, between 1999 and 2001, Hampton Roads recorded four exceedances of the 1-hour ozone standard. As a result, Virginia is required to implement the contingency measures specified in the maintenance plan established for Hampton Roads. One of these measures is the removal of the exemption provided to four localities in the area from existing requirements for limiting VOC emissions. Removal of the exemption will allow Virginia to implement contingency measures required by the maintenance plan with the expectation that the additional VOC reductions provided will ensure that the Area continues to achieve the 1-hour ozone standard.

Chapter 40 of the Regulations for the Control and Abatement of Air Pollution contains a number of regulations with VOC emission standards. The geographic applicability of these rules is defined by establishing VOC emissions control areas in a list located in 9 VAC 5-20-206 of Chapter 20. This list currently exempts existing stationary sources located in James City County, York County, Poquoson City, and Williamsburg City from the applicable VOC standards as set forth in several articles in Chapter 40. This SIP revision amends 9 VAC 5-20-206.1.c. by removing the exemption from the VOC emission standards in Chapter 40 for the four aforementioned localities. These four localities will now be subject to the VOC standards for existing sources as is the case in the other jurisdictions within the Hampton Roads VOC Emissions Control Area. Existing sources of VOC emissions in these localities will now be required to meet the emissions standards set forth in Chapter 40 of the regulations for the control of air pollution.

III. General Information Pertaining to SIP Submittals From the Commonwealth of Virginia

In 1995, Virginia adopted legislation that provides, subject to certain conditions, for an environmental assessment (audit) "privilege" for voluntary compliance evaluations performed by a regulated entity. The legislation further addresses the relative burden of proof for parties either asserting the privilege or seeking disclosure of documents for which the privilege is claimed. Virginia's legislation also provides, subject to certain conditions, for a penalty waiver for violations of environmental laws when a regulated entity discovers such violations pursuant to a voluntary compliance evaluation and voluntarily discloses such violations to the

Commonwealth and takes prompt and appropriate measures to remedy the violations. Virginia's Voluntary Environmental Assessment Privilege Law, Va. Code Sec. 10.1-1198, provides a privilege that protects from disclosure documents and information about the content of those documents that are the product of a voluntary environmental assessment. The Privilege Law does not extend to documents or information (1) that are generated or developed before the commencement of a voluntary environmental assessment; (2) that are prepared independently of the assessment process; (3) that demonstrate a clear, imminent and substantial danger to the public health or environment; or (4) that are required by law.

On January 12, 1998, the Commonwealth of Virginia Office of the Attorney General provided a legal opinion that states that the Privilege law, Va. Code Sec. 10.1-1198, precludes granting a privilege to documents and information "required by law," including documents and information "required by Federal law to maintain program delegation, authorization or approval," since Virginia must "enforce Federally authorized environmental programs in a manner that is no less stringent than their Federal counterparts * * *." The opinion concludes that "[r]egarding § 10.1-1198, therefore, documents or other information needed for civil or criminal enforcement under one of these programs could not be privileged because such documents and information are essential to pursuing enforcement in a manner required by Federal law to maintain program delegation, authorization or approval."

Virginia's Immunity law, Va. Code Sec. 10.1-1199, provides that "[t]o the extent consistent with requirements imposed by Federal law," any person making a voluntary disclosure of information to a state agency regarding a violation of an environmental statute, regulation, permit, or administrative order is granted immunity from administrative or civil penalty. The Attorney General's January 12, 1998 opinion states that the quoted language renders this statute inapplicable to enforcement of any Federally authorized programs, since "no immunity could be afforded from administrative, civil, or criminal penalties because granting such immunity would not be consistent with Federal law, which is one of the criteria for immunity."

Therefore, EPA has determined that Virginia's Privilege and Immunity statutes will not preclude the Commonwealth from enforcing its program consistent with the Federal

requirements. In any event, because EPA has also determined that a state audit privilege and immunity law can affect only state enforcement and cannot have any impact on Federal enforcement authorities, EPA may at any time invoke its authority under the Clean Air Act, including, for example, sections 113, 167, 205, 211 or 213, to enforce the requirements or prohibitions of the state plan, independently of any state enforcement effort. In addition, citizen enforcement under section 304 of the Clean Air Act is likewise unaffected by this, or any, state audit privilege or immunity law.

IV. Final Action

EPA is approving the SIP revision submitted by the Commonwealth of Virginia on February 22, 2005, amending 9 VAC 5-20-206.1.c. by removing the exemption provided to the counties of James City and York, and the cities of Poquoson and Williamsburg, located in the Hampton Roads VOC Emissions Control Area, from existing VOC emission standards. Removal of this exemption will allow Virginia to implement a contingency measure required by its maintenance plan to address a violation of the 1-hour ozone standard.

EPA is publishing this rule without prior proposal because the Agency views this as a noncontroversial amendment and anticipates no adverse comment. However, in the "Proposed Rules" section of today's **Federal Register**, EPA is publishing a separate document that will serve as the proposal to approve the SIP revision if adverse comments are filed. This rule will be effective on August 19, 2005 without further notice unless EPA receives adverse comment by July 20, 2005. If EPA receives adverse comment, EPA will publish a timely withdrawal in the **Federal Register** informing the public that the rule will not take effect. EPA will address all public comments in a subsequent final rule based on the proposed rule. EPA will not institute a second comment period on this action. Any parties interested in commenting must do so at this time.

V. Statutory and Executive Order Reviews

A. General Requirements

Under Executive Order 12866 (58 FR 51735, October 4, 1993), this action is not a "significant regulatory action" and therefore is not subject to review by the Office of Management and Budget. For this reason, this action is also not subject to Executive Order 13211, "Actions Concerning Regulations That

Significantly Affect Energy Supply, Distribution, or Use" (66 FR 28355, May 22, 2001). This action merely approves state law as meeting Federal requirements and imposes no additional requirements beyond those imposed by state law. Accordingly, the Administrator certifies that this rule will not have a significant economic impact on a substantial number of small entities under the Regulatory Flexibility Act (5 U.S.C. 601 *et seq.*). Because this rule approves pre-existing requirements under state law and does not impose any additional enforceable duty beyond that required by state law, it does not contain any unfunded mandate or significantly or uniquely affect small governments, as described in the Unfunded Mandates Reform Act of 1995 (Public Law 104-4). This rule also does not have tribal implications because it will not have a substantial direct effect on one or more Indian tribes, on the relationship between the Federal Government and Indian tribes, or on the distribution of power and responsibilities between the Federal Government and Indian tribes, as specified by Executive Order 13175 (65 FR 67249, November 9, 2000). This action also does not have Federalism implications because it does not have substantial direct effects on the States, on the relationship between the national government and the States, or on the distribution of power and responsibilities among the various levels of government, as specified in Executive Order 13132 (64 FR 43255, August 10, 1999). This action merely approves a state rule implementing a Federal requirement, and does not alter the relationship or the distribution of power and responsibilities established in the Clean Air Act. This rule also is not subject to Executive Order 13045 "Protection of Children from

Environmental Health Risks and Safety Risks" (62 FR 19885, April 23, 1997), because it is not economically significant.

In reviewing SIP submissions, EPA's role is to approve state choices, provided that they meet the criteria of the Clean Air Act. In this context, in the absence of a prior existing requirement for the State to use voluntary consensus standards (VCS), EPA has no authority to disapprove a SIP submission for failure to use VCS. It would thus be inconsistent with applicable law for EPA, when it reviews a SIP submission, to use VCS in place of a SIP submission that otherwise satisfies the provisions of the Clean Air Act. Thus, the requirements of section 12(d) of the National Technology Transfer and Advancement Act of 1995 (15 U.S.C. 272 note) do not apply. This rule does not impose an information collection burden under the provisions of the Paperwork Reduction Act of 1995 (44 U.S.C. 3501 *et seq.*).

B. Submission to Congress and the Comptroller General

The Congressional Review Act, 5 U.S.C. 801 *et seq.*, as added by the Small Business Regulatory Enforcement Fairness Act of 1996, generally provides that before a rule may take effect, the agency promulgating the rule must submit a rule report, which includes a copy of the rule, to each House of the Congress and to the Comptroller General of the United States. EPA will submit a report containing this rule and other required information to the U.S. Senate, the U.S. House of Representatives, and the Comptroller General of the United States prior to publication of the rule in the **Federal Register**. This rule is not a "major rule" as defined by 5 U.S.C. 804(2).

C. Petitions for Judicial Review

Under section 307(b)(1) of the Clean Air Act, petitions for judicial review of this action must be filed in the United States Court of Appeals for the appropriate circuit by August 19, 2005. Filing a petition for reconsideration by the Administrator of this final rule does not affect the finality of this rule for the purposes of judicial review nor does it extend the time within which a petition for judicial review may be filed, and shall not postpone the effectiveness of such rule or action. This action, removing the VOC emission standards exemption for four localities located in the Hampton Roads Emissions Control Area, may not be challenged later in proceedings to enforce its requirements. (See section 307(b)(2).)

List of Subjects in 40 CFR Part 52

Environmental protection, Air pollution control, Ozone, Reporting and recordkeeping requirements, Volatile organic compounds.

Dated: June 13, 2005.

Thomas Voltaggio,
Acting, Regional Administrator, Region III.

■ 40 CFR part 52 is amended as follows:

PART 52—[AMENDED]

■ 1. The authority citation for part 52 continues to read as follows:

Authority: 42 U.S.C. 7401 *et seq.*

Subpart VV—Virginia

■ 2. In Section 52.2420, the table in paragraph (c) is amended by adding an entry for Chapter 20, section 5-20-206 after the existing entry for 5-20-206 to read as follows:

§ 52.2420 Identification of plan.

* * * * *

(c) * * *

EPA-APPROVED VIRGINIA REGULATIONS AND STATUTES

State citation (9 VAC 5)	Title/subject	State effective date	EPA approval date	Explanation [former SIP citation]
*	*	*	*	*
CHAPTER 20 General Provisions—(Part II)				
5-20-206	Volatile Organic Compound and Nitrogen Oxides Emissions Control Areas.	3/24/04	6/20/05 [Insert page number where the document begins]	Revised 5-20-206.1.c. applicable to the Hampton Roads VOC Emissions Control Area.
*	*	*	*	*

* * * * *

[FR Doc. 05-12078 Filed 6-17-05; 8:45 am]

BILLING CODE 6560-50-P

Proposed Rules

Federal Register

Vol. 70, No. 117

Monday, June 20, 2005

This section of the FEDERAL REGISTER contains notices to the public of the proposed issuance of rules and regulations. The purpose of these notices is to give interested persons an opportunity to participate in the rule making prior to the adoption of the final rules.

OFFICE OF PERSONNEL MANAGEMENT

5 CFR Part 531

RIN 3206-AK78

General Schedule Locality Pay Areas

AGENCY: Office of Personnel Management.

ACTION: Proposed rule.

SUMMARY: On behalf of the President's Pay Agent, the Office of Personnel Management is issuing proposed regulations on the locality pay program for General Schedule employees. The proposed regulations would merge the Kansas City, St. Louis, and Orlando locality pay areas with the Rest of U.S. locality pay area; create new locality pay areas for Buffalo, NY; Phoenix, AZ; and Raleigh, NC; add Fannin County, TX, to the Dallas-Fort Worth locality pay area; and make minor changes in the official description of the Los Angeles-Long Beach-Riverside and Washington-Baltimore-Northern Virginia locality pay areas. The new locality pay area definitions would become effective in January 2006.

DATES: We must receive comments on or before August 19, 2005.

ADDRESSES: Send or deliver comments to Donald J. Winstead, Deputy Associate Director for Pay and Performance Policy, Office of Personnel Management, Room 7H31, 1900 E Street, NW., Washington, DC 20415-8200; FAX: (202) 606-4264; or e-mail: pay-performance-policy@opm.gov.

FOR FURTHER INFORMATION CONTACT: Allan Hearne, (202) 606-2838; FAX: (202) 606-4264; e-mail: pay-performance-policy@opm.gov.

SUPPLEMENTARY INFORMATION: Section 5304 of title 5, United States Code, authorizes locality pay for General Schedule (GS) employees with duty stations in the contiguous United States and the District of Columbia. By law, locality pay is set by comparing GS pay rates with non-Federal pay rates for the same levels of work in each locality pay

area. Non-Federal pay levels are estimated by means of salary surveys conducted by the Bureau of Labor Statistics (BLS). Currently, there are 32 locality pay areas: 31 separate metropolitan locality pay areas and a "Rest of U.S." (RUS) locality pay area that consists of all locations in the contiguous United States that are not part of one of the 31 separate metropolitan locality pay areas.

Section 5304(f) of title 5, United States Code, authorizes the President's Pay Agent (the Secretary of Labor, the Director of the Office of Management and Budget (OMB), and the Director of the Office of Personnel Management (OPM)) to determine locality pay areas. The boundaries of locality pay areas must be based on appropriate factors, which may include local labor market patterns, commuting patterns, and the practices of other employers. The Pay Agent must give thorough consideration to the views and recommendations of the Federal Salary Council, a body composed of experts in the fields of labor relations and pay policy and representatives of Federal employee organizations. The President appoints the members of the Federal Salary Council, which submits annual recommendations to the President's Pay Agent about the locality pay program. Based on recommendations of the Federal Salary Council, we use Metropolitan Statistical Area (MSA) and Combined Statistical Area (CSA) definitions established by the Office of Management and Budget as the basis for locality pay area definitions.

Merging Three Locality Pay Areas With the RUS Locality Pay Area

The Federal Salary Council recommended in 2003 that the Pay Agent merge the Kansas City, St. Louis, and Orlando locality pay areas with the RUS locality pay area in 2005 and ask BLS to reallocate its survey resources to cover other areas. The Council made this recommendation because pay comparisons between General Schedule pay and non-Federal pay show that the overall pay disparity in those areas has been below that for the RUS locality pay area for several years. The RUS area serves as the "base" rate, since it is not reasonable to allow a locality pay rate in a metropolitan area to be below the catch-all RUS area rate that would apply just outside the metropolitan area. The

Council determined that BLS survey resources would be better used in other locations currently in the RUS locality pay area where non-Federal pay levels might warrant higher locality pay and where large numbers of GS employees work. The Pay Agent concurred with this recommendation in its 2003 report to the President, but later requested that the Council review the matter further.

After reviewing more recent salary survey data, the Council recommended in 2004 that the Kansas City, St. Louis, and Orlando locality pay areas be merged with the RUS locality pay area in 2006. The Pay Agent concurred with this recommendation in its 2004 report to the President. This proposed regulation would implement the Council's recommendation by merging the Kansas City, St. Louis, and Orlando locality pay areas with the Rest of U.S. locality pay area in January 2006.

New Locality Pay Areas for 2006

The Council also recommended in 2004 that existing BLS surveys in the Austin, Buffalo, Louisville, Memphis, Phoenix, and Raleigh metropolitan areas be redesigned as full-scale locality pay surveys and that Buffalo, Phoenix, and Raleigh be made separate locality pay areas in 2006. This proposed regulation follows the Council's recommendation and would make Buffalo (Cattaraugus, Erie, and Niagara Counties, NY), Phoenix (Maricopa and Pinal Counties, AZ), and Raleigh (Chatham, Durham, Franklin, Harnett, Johnston, Orange, Person, and Wake Counties, NC) separate locality pay areas in 2006.

The six metropolitan areas listed above each have 2,500 or more GS employees and 375,000 or more non-farm workers in the local economy (a sufficient base for measuring local pay levels). In addition, smaller-scale BLS salary surveys indicated that pay levels in each area were above those found in the RUS locality pay area. For the 2004 review of locality pay, the Pay Agent asked BLS to produce data for these six metropolitan areas (including modeled data as done for the existing locality pay areas) and compared the survey results to base GS rates using its standard locality pay methodology. The Council based its recommendation to add three new locality pay areas in 2006 on pay comparisons showing that Buffalo, Phoenix, and Raleigh each had a Federal/non-Federal pay disparity

significantly higher than the pay disparity in the RUS locality pay area. The pay comparisons for Memphis showed that the pay disparity was less than 1 percentage point above the RUS area pay disparity and that pay disparities in Austin and Louisville were slightly below the RUS area pay disparity. BLS plans to continue work to redesign its salary surveys over the next several years, and the Federal Salary Council and the Pay Agent plan to review data for all six of these areas in the future as additional data become available.

Criteria for Areas of Application Applied to New Locality Pay Areas

Based on the Council's recommendations, the Pay Agent established criteria for evaluating areas adjacent to metropolitan locality pay areas for inclusion in that locality pay area.

The criteria are as follows:

1. *For adjacent MSAs and CSAs:* To be included in an adjacent locality pay area, an adjacent MSA or CSA currently in the RUS locality pay area must have at least 1,500 GS employees and an employment interchange measure of at least 7.5 percent.

2. *For adjacent counties that are not part of a multi-county MSA or CSA:* To be included in an adjacent locality pay area, an adjacent county that is currently in the RUS locality pay area must have at least 400 GS employees and an employment interchange measure of at least 7.5 percent.

3. *For Federal facilities that cross locality pay area boundaries:* To be included in an adjacent locality pay area, that portion of a Federal facility outside of a higher-paying locality pay area must have at least 750 GS employees, the duty stations of the majority of those employees must be within 10 miles of the separate locality pay area, and a significant number of those employees must commute to work from the higher-paying locality pay area.

To calculate commuting rates, OPM uses the "Employment Interchange Measure" which is defined by the Bureau of the Census as "the sum of the percentage of employed residents of the smaller entity who work in the larger entity and the percentage of the employment in the smaller entity that is accounted for by workers who reside in the larger entity."

Based on the above criteria, no additional areas would be added to the new Buffalo or Phoenix locality pay areas, and the following additional areas would be included in the new Raleigh locality pay area:

- The Fayetteville, NC, Metropolitan Statistical Area (MSA), consisting of Hoke and Cumberland Counties, NC;
- The Goldsboro, NC, MSA, consisting of Wayne County, NC; and
- The Federal Correctional Complex Butner, NC.

The Federal Correctional Complex Butner, NC

The proposed regulations would include the Federal Correctional Complex Butner, NC, in the new Raleigh locality pay area. Based on information provided by the Wardens of the prison complex, about 1,050 General Schedule employees are stationed at the prison, with an additional 375 to be added in the spring of 2006. The Durham/Granville County line runs through the prison complex. In fact, the county line runs through several of the buildings at the facility, and many employees work in more than one building on a daily basis. Most of the prison land area and buildings are located in Durham County, inside the Raleigh CSA, but the Low Security Institute, with approximately 285 GS employees, is in Granville County, outside of the Raleigh CSA but less than a mile from the county line. Granville County, with approximately 295 GS employees, does not pass the GS employment criterion for including an adjacent county in a higher-paying locality pay area. Likewise, the portion of the prison in Granville County, with 285 GS employees, does not pass the 750 GS employment criterion for including all of a Federal facility in a locality pay area. However, the Pay Agent believes it would not be administratively feasible or desirable to include only part of the prison facility in the new Raleigh locality pay area and proposes to include the entire correctional facility in that area. We request that the Federal Salary Council consider this matter when it meets later this year and will defer a final decision on this matter until after we hear the Council's views.

Changes in Locality Pay Areas Because of Revisions in Metropolitan Statistical Areas

On February 22, 2005, OMB published OMB Bulletin 05-02 updating MSAs. The bulletin adds the Bonham, TX Micropolitan Statistical Area (Fannin County, TX) to the Dallas-Fort Worth, TX CSA, and adds the Culpeper, VA Micropolitan Statistical Area (Culpeper County, VA) to the Washington-Baltimore-Northern Virginia, DC-MD-VA-WV CSA. The Bulletin also changes the name of the Santa Barbara-Santa Maria-Goleta, CA

MSA to the Santa Barbara-Santa Maria, CA MSA.

In keeping with these changes, the proposed regulations would add the Bonham, TX Micropolitan Statistical Area (Fannin County, TX) to the Dallas-Fort Worth, TX locality pay area. Under 5 CFR 531.606, any additions made by OMB in MSA or CSA definitions affecting locality pay areas will result in changes in the affected locality pay area that become effective at the beginning of the next calendar year. Because Culpeper County, VA already is part of the Washington-Baltimore-Northern Virginia locality pay area, the boundaries of the Washington-Baltimore-Northern Virginia area will not change. Finally, we have updated the definition of the Los Angeles-Long Beach-Riverside, CA locality pay area to reflect the new name of the Santa Barbara-Santa Maria, CA MSA.

Impact and Implementation

The Pay Agent plans to implement the changes in locality pay area boundaries, as described above, in January 2006. Overall, the proposed changes in locality pay area boundaries would move about 34,000 GS employees to the RUS locality pay area and move about 25,000 GS employees to a separate metropolitan locality pay area from the RUS locality pay area.

E.O. 12866, Regulatory Review

The Office of Management and Budget has reviewed this rule in accordance with E.O. 12866.

Regulatory Flexibility Act

I certify that these regulations would not have a significant economic impact on a substantial number of small entities because they would apply only to Federal agencies and employees.

List of Subjects in 5 CFR Part 531

Government employees, Law enforcement officers, Wages.

Office of Personnel Management.

Dan G. Blair,

Acting Director.

Accordingly, OPM is proposing to amend 5 CFR part 531 as follows:

PART 531—PAY UNDER THE GENERAL SCHEDULE

1. The authority citation for part 531 continues to read as follows:

Authority: 5 U.S.C. 5115, 5307, and 5338; sec. 4 of Pub. L. 103-89, 107 Stat. 981; and E.O. 12748, 56 FR 4521, 3 CFR, 1991 Comp., p. 316; Subpart B also issued under 5 U.S.C. 5303(g), 5333, 5334(a), and 7701(b)(2); Subpart C also issued under 5 U.S.C. 5304, 5305, and 5553; sections 302 and 404 of

Federal Employees Pay Comparability Act of 1990 (FEPCA), Pub. L. 101-509, 104 Stat. 1462 and 1466; and section 3(7) of Pub. L. 102-378, 106 Stat. 1356; Subpart D also issued under 5 U.S.C. 5335(g) and 7701(b)(2); Subpart E also issued under 5 U.S.C. 5336; Subpart F also issued under 5 U.S.C. 5304, 5305(g)(1), and 5553; and E.O. 12883, 58 FR 63281, 3 CFR, 1993 Comp., p. 682 and E.O. 13106, 63 FR 68151, 3 CFR, 1998 Comp., p. 224; Subpart G also issued under 5 U.S.C. 5304, 5305, and 5553; section 302 of the FEPCA, Pub. L. 101-509, 104 Stat. 1462; and E.O. 12786, 56 FR 67453, 3 CFR, 1991 Comp., p. 376.

Subpart F—Locality-Based Comparability Payments

1. In § 531.603, paragraph (b) is revised to read as follows:

§ 531.603 Locality pay areas.

* * * * *

(b) The following are locality pay areas for purposes of this subpart:

(1) Atlanta-Sandy Springs-Gainesville, GA-AL—consisting of the Atlanta-Sandy Springs-Gainesville, GA-AL CSA;

(2) Boston-Worcester-Manchester, MA-NH-ME-RI—consisting of the Boston-Worcester-Manchester, MA-NH CSA, plus the Providence-New Bedford-Fall River, RI-MA MSA, Barnstable County, MA, and Berwick, Eliot, Kittery, South Berwick, and York towns in York County, ME;

(3) Buffalo-Niagara-Cattaraugus, NY—consisting of the Buffalo-Niagara-Cattaraugus, NY Combined Statistical Area;

(4) Chicago-Naperville-Michigan City, IL-IN-WI—consisting of the Chicago-Naperville-Michigan City, IL-IN-WI CSA;

(5) Cincinnati-Middletown-Wilmington, OH-KY-IN—consisting of the Cincinnati-Middletown-Wilmington, OH-KY-IN CSA;

(6) Cleveland-Akron-Elyria, OH—consisting of the Cleveland-Akron-Elyria, OH CSA;

(7) Columbus-Marion-Chillicothe, OH—consisting of the Columbus-Marion-Chillicothe, OH CSA;

(8) Dallas-Fort Worth, TX—consisting of the Dallas-Fort Worth, TX CSA;

(9) Dayton-Springfield-Greenville, OH—consisting of the Dayton-Springfield-Greenville, OH CSA;

(10) Denver-Aurora-Boulder, CO—consisting of the Denver-Aurora-Boulder, CO CSA, plus the Ft. Collins-Loveland, CO MSA and Weld County, CO;

(11) Detroit-Warren-Flint, MI—consisting of the Detroit-Warren-Flint, MI CSA, plus Lenawee County, MI;

(12) Hartford-West Hartford-Willimantic, CT-MA—consisting of the Hartford-West Hartford-Willimantic, CT

CSA, plus the Springfield, MA MSA and New London County, CT;

(13) Houston-Baytown-Huntsville, TX—consisting of the Houston-Baytown-Huntsville, TX CSA;

(14) Huntsville-Decatur, AL—consisting of the Huntsville-Decatur, AL CSA;

(15) Indianapolis-Anderson-Columbus, IN—consisting of the Indianapolis-Anderson-Columbus, IN CSA, plus Grant County, IN;

(16) Los Angeles-Long Beach-Riverside, CA—consisting of the Los Angeles-Long Beach-Riverside, CA CSA, plus the Santa Barbara-Santa Maria, CA MSA and all of Edwards Air Force Base, CA;

(17) Miami-Fort Lauderdale-Miami Beach, FL—consisting of the Miami-Fort Lauderdale-Miami Beach, FL MSA, plus Monroe County, FL;

(18) Milwaukee-Racine-Waukesha, WI—consisting of the Milwaukee-Racine-Waukesha, WI CSA;

(19) Minneapolis-St. Paul-St. Cloud, MN-WI—consisting of the Minneapolis-St. Paul-St. Cloud, MN-WI CSA;

(20) New York-Newark-Bridgeport, NY-NJ-CT-PA—consisting of the New York-Newark-Bridgeport, NY-NJ-CT-PA CSA, plus Monroe County, PA, and Warren County, NJ;

(21) Philadelphia-Camden-Vineland, PA-NJ-DE-MD—consisting of the Philadelphia-Camden-Vineland, PA-NJ-DE-MD CSA, plus Kent County, DE, Atlantic County, NJ, and Cape May County, NJ;

(22) Phoenix-Mesa-Scottsdale, AZ—consisting of the Phoenix-Mesa-Scottsdale, AZ Metropolitan Statistical Area;

(23) Pittsburgh-New Castle, PA—consisting of the Pittsburgh-New Castle, PA CSA;

(24) Portland-Vancouver-Beaverton, OR-WA—consisting of the Portland-Vancouver-Beaverton, OR-WA MSA, plus Marion County, OR, and Polk County, OR;

(25) Raleigh-Durham-Cary, NC—consisting of the Raleigh-Durham-Cary, NC Combined Statistical Area, plus the Fayetteville, NC Metropolitan Statistical Area, the Goldsboro, NC Metropolitan Statistical Area, and the Federal Correctional Complex Butner, NC;

(26) Richmond, VA—consisting of the Richmond, VA MSA;

(27) Sacramento—Arden—Arcade—Truckee, CA-NV—consisting of the Sacramento—Arden—Arcade—Truckee, CA-NV CSA, plus Carson City, NV;

(28) San Diego-Carlsbad-San Marcos, CA—consisting of the San Diego-Carlsbad-San Marcos, CA MSA;

(29) San Jose-San Francisco-Oakland, CA—consisting of the San Jose-San

Francisco-Oakland, CA CSA, plus the Salinas, CA MSA and San Joaquin County, CA;

(30) Seattle-Tacoma-Olympia, WA—consisting of the Seattle-Tacoma-Olympia, WA CSA;

(31) Washington-Baltimore-Northern Virginia, DC-MD-VA-WV—consisting of the Washington-Baltimore-Northern Virginia, DC-MD-VA-WV CSA, plus the Hagerstown-Martinsburg, MD-WV MSA, and King George County, VA; and

(32) Rest of U.S.—consisting of those portions of the continental United States not located within another locality pay area.

* * * * *

[FR Doc. 05-12033 Filed 6-17-05; 8:45 am]

BILLING CODE 6325-39-P

DEPARTMENT OF TRANSPORTATION

Federal Aviation Administration

14 CFR Part 39

[Docket No. FAA-2005-21410; Directorate Identifier 2005-CE-31-AD]

RIN 2120-AA64

Airworthiness Directives; Raytheon Aircraft Company Model 390 Airplanes

AGENCY: Federal Aviation Administration (FAA), DOT.

ACTION: Notice of proposed rulemaking (NPRM).

SUMMARY: The FAA proposes to adopt a new airworthiness directive (AD) for certain Raytheon Aircraft Company (Raytheon) Model 390 airplanes. This proposed AD would require you to replace the rudder pedal arm assemblies used in the rudder control system with parts of improved design. This proposed AD results from reports of cracks found on the rudder pedal arm assemblies. We are issuing this proposed AD to prevent failure of the rudder pedal arm assemblies caused by fatigue cracks. This failure could lead to loss of rudder control, loss of nose gear steering, and loss of toe brakes on the side on which the failure occurs.

DATES: We must receive any comments on this proposed AD by August 19, 2005.

ADDRESSES: Use one of the following to submit comments on this proposed AD:

- **DOT Docket Web site:** Go to <http://dms.dot.gov> and follow the instructions for sending your comments electronically.

- **Government-wide rulemaking Web site:** Go to <http://www.regulations.gov> and follow the instructions for sending your comments electronically.

• *Mail:* Docket Management Facility; U.S. Department of Transportation, 400 Seventh Street, SW., Nassif Building, Room PL-401, Washington, DC 20590-001.

• *Fax:* 1-202-493-2251.

• *Hand Delivery:* Room PL-401 on the plaza level of the Nassif Building, 400 Seventh Street, SW., Washington, DC, between 9 a.m. and 5 p.m., Monday through Friday, except Federal holidays.

To get the service information identified in this proposed AD, contact Raytheon Aircraft Company, 9709 E. Central, Wichita, Kansas 67201-0085; telephone: (800) 429-5372 or (316) 676-3140.

To view the comments to this proposed AD, go to <http://dms.dot.gov>. The docket number is FAA-2005-21410; Directorate Identifier 2005-CE-31-AD.

FOR FURTHER INFORMATION CONTACT: David Ostrodka, Aerospace Engineer, Wichita Aircraft Certification Office (ACO), FAA, 1801 Airport Road, Wichita, Kansas 67209; telephone: (316) 946-4129; facsimile: (316) 946-4107; e-mail: david.ostrodka@faa.gov.

SUPPLEMENTARY INFORMATION:

Comments Invited

How do I comment on this proposed AD? We invite you to submit any written relevant data, views, or arguments regarding this proposal. Send your comments to an address listed under **ADDRESSES**. Include the docket number, "FAA-2005-21410; Directorate Identifier 2005-CE-31-AD" at the beginning of your comments. We will post all comments we receive, without change, to <http://dms.dot.gov>, including any personal information you provide. We will also post a report summarizing each substantive verbal contact with FAA personnel concerning this proposed rulemaking. Using the search function of our docket web site, anyone can find and read the comments received into any of our dockets, including the name of the individual who sent the comment (or signed the comment on behalf of an association, business, labor union, etc.). This is docket number FAA-2005-21410; Directorate Identifier 2005-CE-31-AD. You may review the DOT's complete Privacy Act Statement in the **Federal Register** published on April 11, 2000

(65 FR 19477-78) or you may visit <http://dms.dot.gov>.

Are there any specific portions of this proposed AD I should pay attention to? We specifically invite comments on the overall regulatory, economic, environmental, and energy aspects of this proposed AD. If you contact us through a nonwritten communication and that contact relates to a substantive part of this proposed AD, we will summarize the contact and place the summary in the docket. We will consider all comments received by the closing date and may amend this proposed AD in light of those comments and contacts.

Docket Information

Where can I go to view the docket information? You may view the AD docket that contains the proposal, any comments received, and any final disposition in person at the DMS Docket Offices between 9 a.m. and 5 p.m. (eastern standard time), Monday through Friday, except Federal holidays. The Docket Office (telephone 1-800-647-5227) is located on the plaza level of the Department of Transportation NASSIF Building at the street address stated in **ADDRESSES**. You may also view the AD docket on the Internet at <http://dms.dot.gov>. The comments will be available in the AD docket shortly after the DMS receives them.

Discussion

What events have caused this proposed AD? Raytheon received a report that, during ground maintenance operations, the pilot's outboard rudder pedal arm assembly cracked at the upper end of the arm.

While maneuvering the aircraft from a right turn to neutral with toe brake applied during an on-ground compass swing, the rudder pedal arm assembly cracked.

Further investigation revealed another airplane with a crack on the copilot's outboard rudder pedal arm assembly.

Raytheon has determined that loading of the rudder pedals off the centerline of the rudder pedal arm assembly results in overload, which causes fatigue cracking of the rudder pedal arm assembly.

What is the potential impact if FAA took no action? If not prevented, cracks

in the rudder pedal arm assembly could cause the rudder pedal arm assembly to fail. This failure could lead to loss of rudder control, loss of nose gear steering, and loss of toe brakes on the side on which the failure occurs.

Is there service information that applies to this subject? Raytheon Aircraft Company has issued Mandatory Service Bulletin SB 27-3691, Rev. 1, Revised February 2005.

What are the provisions of this service information? The service bulletin includes procedures for replacing rudder pedal arm assemblies, part numbers (P/Ns) 390-524350-0001, 390-524350-0002, 390-524351-0001, and 390-524351-0002 with improved design parts, P/Ns 390-524400-0001, 390-524400-0002, 390-524401-0003, and 390-524401-0004.

FAA's Determination and Requirements of This Proposed AD

What has FAA decided? We have evaluated all pertinent information and identified an unsafe condition that is likely to exist or develop on other products of this same type design. For this reason, we are proposing AD action.

What would this proposed AD require? This proposed AD would require you to incorporate the actions in the previously-referenced service bulletin.

How does the revision to 14 CFR part 39 affect this proposed AD? On July 10, 2002, we published a new version of 14 CFR part 39 (67 FR 47997, July 22, 2002), which governs FAA's AD system. This regulation now includes material that relates to altered products, special flight permits, and alternative methods of compliance. This material previously was included in each individual AD. Since this material is included in 14 CFR part 39, we will not include it in future AD actions.

Costs of Compliance

How many airplanes would this proposed AD impact? We estimate that this proposed AD affects 98 airplanes in the U.S. registry.

What would be the cost impact of this proposed AD on owners/operators of the affected airplanes? We estimate the following costs to do the proposed modification:

Labor cost	Parts cost	Total cost per airplane	Total cost on U.S. operators
8 work hours × \$65 per hour = \$520	\$1,165	\$1,685	\$1,685 × 98 = \$165,130

Raytheon will provide warranty credit for parts and labor to extent stated in the service information. Therefore, the proposed actions, if done following the service information, would have little or no cost to the owners/operators of the affected airplanes.

Authority for This Rulemaking

What authority does FAA have for issuing this rulemaking action? Title 49 of the United States Code specifies the FAA's authority to issue rules on aviation safety. Subtitle I, Section 106 describes the authority of the FAA Administrator. Subtitle VII, Aviation Programs, describes in more detail the scope of the agency's authority.

We are issuing this rulemaking under the authority described in Subtitle VII, Part A, Subpart III, Section 44701, "General requirements." Under that section, Congress charges the FAA with promoting safe flight of civil aircraft in air commerce by prescribing regulations for practices, methods, and procedures the Administrator finds necessary for safety in air commerce. This regulation is within the scope of that authority because it addresses an unsafe condition that is likely to exist or develop on products identified in this AD.

Regulatory Findings

Would this proposed AD impact various entities? We have determined that this proposed AD would not have federalism implications under Executive Order 13132. This proposed AD would not have a substantial direct effect on the States, on the relationship between the national Government and the States, or on the distribution of power and responsibilities among the various levels of government.

Would this proposed AD involve a significant rule or regulatory action? For

the reasons discussed above, I certify that this proposed AD:

1. Is not a "significant regulatory action" under Executive Order 12866;
2. Is not a "significant rule" under the DOT Regulatory Policies and Procedures (44 FR 11034, February 26, 1979); and
3. Will not have a significant economic impact, positive or negative, on a substantial number of small entities under the criteria of the Regulatory Flexibility Act.

We prepared a summary of the costs to comply with this proposed AD (and other information as included in the Regulatory Evaluation) and placed it in the AD Docket. You may get a copy of this summary by sending a request to us at the address listed under **ADDRESSES**. Include "AD Docket FAA-2005-21410; Directorate Identifier 2005-CE-31-AD" in your request.

List of Subjects in 14 CFR Part 39

Air transportation, Aircraft, Aviation safety, Safety.

The Proposed Amendment

Accordingly, under the authority delegated to me by the Administrator, the Federal Aviation Administration proposes to amend 14 CFR part 39 as follows:

PART 39—AIRWORTHINESS DIRECTIVES

1. The authority citation for part 39 continues to read as follows:

Authority: 49 U.S.C. 106(g), 40113, 44701.

§ 39.13 [Amended]

2. The FAA amends § 39.13 by adding the following new airworthiness directive (AD):

Raytheon Aircraft Company: Docket No. FAA-2005-21410; Directorate Identifier 2005-CE-31-AD.

When Is the Last Date I Can Submit Comments on This Proposed AD?

- (a) We must receive comments on this proposed airworthiness directive (AD) by August 19, 2005.

What Other ADs Are Affected By This Action?

- (b) None.

What Airplanes Are Affected by This AD?

- (c) This AD affects the following serial-numbered Model 390 airplanes that are certificated in any category:

SERIAL NUMBERS

- (1) RB-1.
- (2) RB-4 through RB-36.
- (3) RB-38 through RB-41.
- (4) RB-43 through RB-67.
- (5) RB-69 through RB-80.
- (6) RB-82 through RB-84.
- (7) RB-87 through RB-94.
- (8) RB-96 through RB-101.
- (9) RB-103 through RB-115.
- (10) RB-117 through RB-119.
- (11) RB-121.

What Is the Unsafe Condition Presented in This AD?

- (d) This AD is the result of reports of cracks found on the rudder pedal arm assemblies used in the rudder control system. The actions specified in this AD are intended to prevent failure of the rudder pedal arm assemblies caused by fatigue cracks. This failure could lead to loss of rudder control, loss of nose gear steering, and loss of toe brakes on the side on which the failure occurs.

What Must I Do To Address This Problem?

- (e) To address this problem, you must do the following:

Actions	Compliance	Procedures
(1) Replace rudder pedal arm assemblies, part numbers (P/Ns) 390-524350-0001, 390-524350-0002, 390-524351-0001, and 390-524351-0002 with improved design parts, P/Ns 390-524400-0001, 390-524400-0002, 390-524401-0003, and 390-524401-0004.	Upon accumulating 300 hours time-in-service (TIS) or within 100 hours TIS after the effective date of this AD, whichever occurs later, unless already done.	Follow Raytheon Aircraft Company Mandatory Service Bulletin, SB 27-3691, Rev. 1, Revised: February, 2005, and the applicable maintenance manual.
(2) Do not install rudder pedal arm assemblies, P/Ns 390-524350-0001, 390-524350-0002, 390-524351-0001, and 390-524351-0002.	As of the effective date of this AD.	

May I Request an Alternative Method of Compliance?

- (f) You may request a different method of compliance or a different compliance time for this AD by following the procedures in 14 CFR 39.19. Unless FAA authorizes otherwise, send your request to your

principal inspector. The principal inspector may add comments and will send your request to the Manager, Wichita Aircraft Certification Office (ACO), FAA. For information on any already approved alternative methods of compliance, contact David Ostrodka, Aerospace Engineer, Wichita ACO,

FAA, 1801 Airport Road, Wichita, Kansas 67209; telephone: (316) 946-4129; facsimile: (316)

946-4107; e-mail: david.ostrodka@faa.gov.

May I Get Copies of the Documents Referenced in This AD?

(g) To get copies of the documents referenced in this AD, contact Raytheon Aircraft Company, 9709 E. Central, Wichita, Kansas 67201-0085; telephone: (800) 429-5372 or (316) 676-3140. To view the AD docket, go to the Docket Management Facility; U.S. Department of Transportation, 400 Seventh Street, SW., Nassif Building, Room PL-401, Washington, DC, or on the Internet at <http://dms.dot.gov>. The docket number is Docket No. FAA-2005-21410; Directorate Identifier 2005-CE-31-AD.

Issued in Kansas City, Missouri, on June 14, 2005.

John Colomy,

Acting Manager, Small Airplane Directorate, Aircraft Certification Service.

[FR Doc. 05-12060 Filed 6-17-05; 8:45 am]

BILLING CODE 4910-13-P

DEPARTMENT OF VETERANS AFFAIRS

38 CFR Part 3

RIN 2900-AM15

New and Material Evidence

AGENCY: Department of Veterans Affairs.
ACTION: Proposed rule.

SUMMARY: The Department of Veterans Affairs proposes to revise its rules regarding the reconsideration of decisions on claims for benefits based on newly discovered service records received after the initial decision on a claim. The proposed revision would provide consistency in adjudication of certain types of claims.

DATES: Comments must be received on or before August 19, 2005.

ADDRESSES: Written comments may be submitted by: mail or hand-delivery to Director, Regulations Management (00REG1), Department of Veterans Affairs, 810 Vermont Ave., NW., Room 1068, Washington, DC 20420; fax to (202) 273-9026; e-mail to VAregulations@mail.va.gov; or, through <http://www.Regulations.gov>. Comments should indicate that they are submitted in response to "RIN 2900-AM15." All comments received will be available for public inspection in the Office of Regulation Policy and Management, Room 1063B, between the hours of 8 a.m. and 4:30 p.m., Monday through Friday (except holidays). Please call (202) 273-9515 for an appointment.

FOR FURTHER INFORMATION CONTACT: Maya Ferrandino, Consultant, Compensation and Pension Service

(211A), Policy and Regulations Staff, Veterans Benefits Administration, 810 Vermont Avenue, NW., Washington, DC 20420, (202) 273-7232.

SUPPLEMENTARY INFORMATION: To provide consistency in adjudication, we propose to revise current 38 CFR 3.156(c), to establish clearer rules regarding reconsideration of decisions on the basis of newly discovered service department records. We propose to include the substance of current 38 CFR 3.400(q)(2) in revised § 3.156(c). Current § 3.400(q)(2) governs the effective date of benefits awarded when VA reconsiders a claim based on newly discovered service department records. We propose to redesignate current § 3.400(q)(1) as new § 3.400(q)(1) and (2) without substantive change.

Current §§ 3.156(c) and 3.400(q)(2) together establish an exception to the general effective date rule set forth in § 3.400, which provides that the effective date of an award of benefits will be the date of claim or the date entitlement arose, whichever is the later. The exception applies when VA receives official service department records that were unavailable at the time that VA previously decided a claim for benefits and those records lead VA to award a benefit that was not granted in the previous decision. Under this exception, the effective date of such an award may relate back to the date of the original claim or date entitlement arose even though the decision on that claim may be final under § 3.104.

The provisions in current §§ 3.156(c) and 3.400(q)(2) are also an exception to the general rule in § 3.156(a) concerning claims to reopen based upon "new and material evidence." Generally, § 3.156(a) and current § 3.400(q)(1) provide that a claimant must submit new and material evidence to reopen a finally denied claim, and the effective date for the award of benefits based upon such evidence may be no earlier than the date VA received the claim to reopen. Current § 3.156(c) states that new and material evidence may consist of supplemental service department records received before or after the decision has become final. Current § 3.156(c) is confusing because including a "new and material" requirement infers that VA may reopen a claim when service department records that were unavailable at the time of the prior decision are received, and the effective date would be the date of the reopened claim. In practice, when VA receives service department records that were unavailable at the time of the prior decision, VA may reconsider the prior decision, and the effective date

assigned will relate back to the date of the original claim, or the date entitlement arose, whichever is later. We propose to revise § 3.156(c) to clarify VA's current practice regarding newly received service department records. To eliminate possible confusion regarding the effective date assigned based on newly received service department records, we propose to remove the "new and material" requirement in current § 3.156(c).

We also propose to revise current § 3.156(c) by revising the statement in current § 3.156(c) that states that VA will reconsider its decision regarding a claim for benefits if it receives misplaced service department records or certain corrected service department records. In proposed paragraph § 3.156(c)(1), we propose to elaborate on this statement and generally describe service department records as including any official service department records relating to the claimed in-service event, injury, or disease, regardless of whether such records mention the veteran by name, as long as the other requirements of paragraph (c) are met. We intend that this broad description of "service department records" will also include unit records, such as those obtained from the Center for Research of Unit Records (CRUR) that pertain to military experiences claimed by a veteran. Such evidence may be particularly valuable in connection with claims for benefits for post traumatic stress disorder.

We also propose to clarify the language in current § 3.156(c), which suggests that reconsideration may occur only if the service department records "presumably have been misplaced and have now been located." Even though the current language can be read as a limitation, in practice, VA does not limit its reconsideration to "misplaced" service department records. Rather, VA intended the reference to misplaced records as an example of the type of service department records that may have been unavailable when it issued a decision on a claim. The proposed revision to § 3.156(c) removes this ambiguity.

Proposed § 3.156(c)(1)(iii), adds "declassified records that could not have been obtained because the records were classified when VA decided the claim" as an example of service department records that may have been unavailable at the time of the prior decision. Declassified records may provide evidence of injuries, exposures, or other events in service that may support a claim for VA benefits. Classified service department records are similar to misplaced records and subsequently corrected records in that

they were unavailable at the time of VA's initial adjudication of the claim. Therefore, it is reasonable to include declassified service department records within the scope of the proposed rule.

We propose in § 3.156(c)(2) to limit the application of this rule by stating that it "does not apply to records that VA could not have obtained when it decided the claim because the records did not exist when VA decided the claim, or the claimant failed to provide VA sufficient information for VA to identify and obtain the records from the respective service department, the Center for Research of Unit Records, or from any other official source." Reconsideration based upon service department records would not be available in cases where the claimant did not provide information that would have enabled VA or another federal agency to identify and search for relevant records. This limitation would allow VA to reconsider decisions and retroactively evaluate disability in a fair manner, on the basis that a claimant should not be harmed by an administrative deficiency of the government, but limited by the extent to which the claimant has cooperated with VA's efforts to obtain these records.

We also propose to limit the application of § 3.156(c) to avoid conflict with 38 U.S.C. 5110(i), which specifically limits the effective date of an award based on corrected service department records to no earlier than one year before the date on which the previously disallowed claim was reopened. *See also* 38 CFR 3.400(g). Accordingly, proposed § 3.156(c) excludes decisions based upon this type of corrected service department records because the proposed rule does not apply to "records that VA could not have obtained * * * because the records did not exist when VA decided the claim." For the sake of additional clarity, we propose to cross reference 38 CFR 3.400(g) at the end of the rule.

We propose to remove the language in current § 3.156(c) requiring the submission of "a supplemental report from the service department" as a prerequisite to reconsideration and retroactive evaluation of disability, because VA does not require such supplemental reports in its current administrative proceedings. If, for example, VA itself had been in possession of the records during the prior adjudication but did not associate the records with the claim before a final denial, then the evidence would still warrant reconsideration and a retroactive evaluation of disability or entitlement to benefits under this rule. For the same reason, we propose to

eliminate the third sentence of current § 3.156(c), which refers to the same type of report.

Current §§ 3.156(c) and 3.400(q)(2) may be read as requiring an earlier effective date for the award of benefits upon reconsideration only when the basis for the award is newly discovered service department records. Proposed § 3.156(c)(3) eliminates this ambiguity and clarifies that "[a]n award based all or in part on the records identified by paragraph (c)(1) of this section is effective on the date entitlement arose or the date VA received the previously decided claim, whichever is later, or such other date as may be authorized by the provisions of this part applicable to the previously decided claim." This provision would apply, for example, in cases where a veteran files a claim for disability compensation, which VA denies because there is no evidence of an in-service injury. Years later, if VA receives service department records that show an in-service injury, and obtains a medical opinion that links that injury to the claimant's current disability, it would grant service connection. Although the doctor's opinion is not a document that meets the definition of proposed § 3.156(c)(1), the service department record showing incurrence, which provided the basis for the medical opinion, is such a document. Therefore, the veteran in this example would be entitled to reconsideration of the prior decision and retroactive evaluation of disability. Any award of benefits as a result of such reconsideration would be effective on the date entitlement arose or the date of claim, whichever is later, or any other date made applicable by law or regulation to previously decided claims.

Benefits awarded upon reconsideration of a claim and/or retroactive evaluations of disability under current § 3.156(c) are effective on the dates specified in current § 3.400(q)(2).

Because we propose to include the rule regarding the effective date of an award of benefits based all or in part on newly discovered service department records in § 3.156(c), we additionally propose to remove that effective date provision from current § 3.400(q).

Paperwork Reduction Act

This document contains no new collections of information under the Paperwork Reduction Act (44 U.S.C. 3501–3521). To the extent the proposed revision to § 3.156(c) applies to service department records obtained by VA or provided by a service department, it does not involve a collection of information under the Paperwork

Reduction Act. To the extent the proposed revision applies to service department records submitted by individual claimants, the collection of information has been approved by OMB in connection with the VA forms governing applications for compensation, pension, and dependency and indemnity compensation (DIC). Those forms govern the submission of evidence, including service department records, that are relevant to claims for those benefits. This proposed rule would merely explain what actions VA will take when such evidence is submitted after VA has made its initial decision on the claim. The OMB approval numbers for those information collections are 2900–0001 (VA Form 21–526, Veterans' Application for Compensation and/or Pension); 2900–004 (VA Form 21–534, Application for DIC, Death Compensation, and Accrued Benefits by a Surviving Spouse or Child); and 2900–005 (VA Form 21–535, Application for DIC by Parent(s)).

Regulatory Flexibility Act

The Secretary hereby certifies that this proposed regulatory amendment will not have a significant economic impact on a substantial number of small entities as they are defined in the Regulatory Flexibility Act, 5 U.S.C. 601–612. This proposed amendment would not affect any small entities. Therefore, pursuant to 5 U.S.C. 605(b), this proposed amendment is exempt from the initial and final regulatory flexibility analysis requirements of sections 603 and 604.

Executive Order 12866

This document has been reviewed by the Office of Management and Budget under Executive Order 12866.

Unfunded Mandates

The Unfunded Mandates Reform Act requires, at 2 U.S.C. 1532, that agencies prepare an assessment of anticipated costs and benefits before developing any rule that may result in an expenditure by State, local, or tribal governments, in the aggregate, or by the private sector, of \$100 million or more (adjusted annually for inflation) in any given year. This rule would have no such effect on State, local, or tribal governments, or the private sector.

Catalog of Federal Domestic Assistance Numbers

The Catalog of Federal Domestic Assistance program numbers for this proposal are 64.100, 64.101, 64.102, 64.104–106, 64.109, and 64.110.

List of Subjects in 38 CFR Part 3

Administrative practice and procedure, Claims, Disability benefits, Health care, Pensions, Veterans.

Approved: March 2, 2005.

R. James Nicholson,

Secretary of Veterans Affairs.

For the reasons set out in the preamble, VA proposes to amend 38 CFR part 3 as follows:

PART 3—Adjudication

1. The authority citation for part 3, subpart A continues to read as follows:

Authority: 38 U.S.C. 501(a), unless otherwise noted.

2. Section 3.156 is amended by:

a. Adding a paragraph heading to paragraph (a).

b. Adding a paragraph heading to paragraph (b).

c. Revising paragraph (c).

The additions and revision read as follows:

§ 3.156 New and material evidence.

(a) *General.* * * *

(b) *Pending claim.* * * *

(c) *Service department records.* (1)

Notwithstanding any other section in this part, at any time after VA issues a decision on a claim, if VA receives or associates with the claims file relevant official service department records that existed and had not been associated with the claims file when VA first decided the claim, VA will reconsider the claim, notwithstanding paragraph (a) of this section. Such records include, but are not limited to:

(i) Service records that are related to a claimed in-service event, injury, or disease, regardless of whether such records mention the veteran by name, as long as the other requirements of paragraph (c) of this section are met;

(ii) Additional service records forwarded by the Department of Defense or the service department to VA any time after VA's original request for service records; and

(iii) Declassified records that could not have been obtained because the records were classified when VA decided the claim.

(2) Paragraph (c)(1) of this section does not apply to records that VA could not have obtained when it decided the claim because the records did not exist when VA decided the claim, or the claimant failed to provide sufficient information for VA to identify and obtain the records from the respective service department, the Center for Research of Unit Records, or from any other official source.

(3) An award made based all or in part on the records identified by paragraph

(c)(1) of this section is effective on the date entitlement arose or the date VA received the previously decided claim, whichever is later, or such other date as may be authorized by the provisions of this part applicable to the previously decided claim.

(4) A retroactive evaluation of disability resulting from disease or injury subsequently service connected on the basis of the new evidence from the service department must be supported adequately by medical evidence. Where such records clearly support the assignment of a specific rating over a part or the entire period of time involved, a retroactive evaluation will be assigned accordingly, except as it may be affected by the filing date of the original claim.

(Authority: 38 U.S.C. 501(a))

* * * * *

3. Section 3.400 is amended by:

a. Revising the heading of paragraph (q).

b. Removing paragraph (q)(1) heading.

c. Redesignating paragraph (q)(1)(i) as new paragraph (q)(1).

d. Removing paragraph (q)(2).

e. Redesignating paragraph (q)(1)(ii) as new paragraph (q)(2).

The revision reads as follows:

§ 3.400 General.

* * * * *

(q) *New and material evidence (§ 3.156) other than service department records.* * * *

* * * * *

[FR Doc. 05-12103 Filed 6-17-05; 8:45 am]

BILLING CODE 8320-01-P

ENVIRONMENTAL PROTECTION AGENCY**40 CFR Part 52**

[R03-OAR-2005-VA-0008; FRL-7925-7]

Approval and Promulgation of Air Quality Implementation Plans; Virginia; VOC Emission Standards in the Hampton Roads VOC Emissions Control Area

AGENCY: Environmental Protection Agency (EPA).

ACTION: Proposed rule.

SUMMARY: EPA is proposing to approve a State Implementation Plan (SIP) revision submitted by the Commonwealth of Virginia. This revision removes the volatile organic compound (VOC) emission standards exemption for sources located in the Hampton Roads VOC Emissions Control Area localities of James City County,

York County, Poquoson City, and Williamsburg City. Sources located in these jurisdictions will now be subject to the VOC emission standards for existing sources as is the case in the other jurisdictions within the Area. This action is necessary in order for Virginia to meet its obligation to implement contingency measures as a result of the area's violation of the 1-hour ozone standard. In the Final Rules section of this **Federal Register**, EPA is approving the State's SIP submittal as a direct final rule without prior proposal because the Agency views this as a noncontroversial submittal and anticipates no adverse comments. A more detailed description of the state submittal and EPA's evaluation are included in a Technical Support Document (TSD) prepared in support of this rulemaking action. A copy of the TSD is available, upon request, from the EPA Regional Office listed in the **ADDRESSES** section of this document. If no adverse comments are received in response to this action, no further activity is contemplated. If EPA receives adverse comments, the direct final rule will be withdrawn and all public comments received will be addressed in a subsequent final rule based on this proposed rule. EPA will not institute a second comment period. Any parties interested in commenting on this action should do so at this time.

DATES: Comments must be received in writing by July 20, 2005.

ADDRESSES: Submit your comments, identified by Regional Material in EDocket (RME) ID Number R03-OAR-2005-VA-0008 by one of the following methods:

A. Federal eRulemaking Portal: <http://www.regulations.gov>. Follow the on-line instructions for submitting comments.

B. Agency Web site: <http://www.docket.epa.gov/rmepub/> RME, EPA's electronic public docket and comment system, is EPA's preferred method for receiving comments. Follow the on-line instructions for submitting comments.

C. E-mail: campbell.dave@epa.gov.

D. Mail: R03-OAR-2005-VA-0008, David Campbell, Chief, Air Quality Planning Branch, Mailcode 3AP21, U.S. Environmental Protection Agency, Region III, 1650 Arch Street, Philadelphia, Pennsylvania 19103.

E. Hand Delivery: At the previously-listed EPA Region III address. Such deliveries are only accepted during the Docket's normal hours of operation, and special arrangements should be made for deliveries of boxed information.

Instructions: Direct your comments to RME ID No. R03-OAR-2005-VA-0008.

EPA's policy is that all comments received will be included in the public docket without change, and may be made available online at <http://www.docket.epa.gov/rmepub/>, including any personal information provided, unless the comment includes information claimed to be Confidential Business Information (CBI) or other information whose disclosure is restricted by statute. Do not submit information that you consider to be CBI or otherwise protected through RME, regulations.gov or e-mail. The EPA RME and the Federal regulations.gov websites are an "anonymous access" system, which means EPA will not know your identity or contact information unless you provide it in the body of your comment. If you send an e-mail comment directly to EPA without going through RME or regulations.gov, your e-mail address will be automatically captured and included as part of the comment that is placed in the public docket and made available on the Internet. If you submit an electronic comment, EPA recommends that you include your name and other contact information in the body of your comment and with any disk or CD-ROM you submit. If EPA cannot read your comment due to technical difficulties and cannot contact you for clarification, EPA may not be able to consider your comment. Electronic files should avoid the use of special characters, any form of encryption, and be free of any defects or viruses.

Docket: All documents in the electronic docket are listed in the RME index at <http://www.docket.epa.gov/rmepub/>. Although listed in the index, some information is not publicly available, i.e., CBI or other information whose disclosure is restricted by statute. Certain other material, such as copyrighted material, is not placed on the Internet and will be publicly available only in hard copy form. Publicly available docket materials are available either electronically in RME or in hard copy during normal business hours at the Air Protection Division, U.S. Environmental Protection Agency, Region III, 1650 Arch Street, Philadelphia, Pennsylvania 19103. Copies of the State submittal are available at the Virginia Department of Environmental Quality, 629 East Main Street, Richmond, Virginia, 23219.

FOR FURTHER INFORMATION CONTACT: Ellen Wentworth, (215) 814-2034, or by e-mail at wentworth.ellen@epa.gov.

SUPPLEMENTARY INFORMATION: For further information, please see the information provided in the direct final action, approving the Control of VOC

Emission Standards Within the Hampton Roads VOC Emissions Control Area, that is located in the "Rules and Regulations" section of this **Federal Register** publication.

Dated: June 13, 2005.

Thomas Valtaggio,

Acting Regional Administrator, Region III.

[FR Doc. 05-12077 Filed 6-17-05; 8:45 am]

BILLING CODE 6560-50-P

DEPARTMENT OF COMMERCE

National Oceanic and Atmospheric Administration

50 CFR Part 223

[Docket No. 050323081-5081-01; I.D. 031505C]

RIN 0648-AT02

Endangered and Threatened Species: Notification of Public Hearing on Proposed Listing Determination for the Southern Distinct Population Segment (DPS) of North American Green Sturgeon as Threatened under the Endangered Species Act (ESA)

AGENCY: National Marine Fisheries Service (NMFS), National Oceanic and Atmospheric Administration (NOAA), Commerce.

ACTION: Proposed rule: notification of public hearing.

SUMMARY: On April 6, 2005, NMFS proposed threatened status for the Southern Distinct Population Segment (DPS) of North American green sturgeon (*Acipenser medirostris*; hereafter "green sturgeon") under the Endangered Species Act (ESA) of 1973. In this notice, NMFS is announcing that a public hearing has been scheduled at one location in Sacramento, CA, in July 2005 to provide additional opportunities for the public and other interested parties to comment on the subject proposal.

DATES: The hearing will be held on July 6, 2005, from 6:30 p.m. - 9:30 p.m.

Written comments on the proposed threatened listing for the Southern green sturgeon DPS must be received by July 6, 2005.

ADDRESSES: The hearing will be held in the Stanford Room at 650 Capitol Mall, Suite 8-300 Sacramento, CA 95814. Please enter the building through the main entrance, which is located on the Capitol Mall side of the building.

You may submit comments on the proposed threatened listing of the Southern green sturgeon DPS, identified by Docket Number 050323081-5081-01

and RIN 0648-AT02, by any of the following methods:

• E-mail:

GreenSturgeon.Comments@noaa.gov. Include docket number and RIN number in the subject line of the message.

• Federal e-Rulemaking Portal: <http://www.regulations.gov>. Follow the instructions for submitting comments.

• Mail: Submit written comments and information to Assistant Regional Administrator, NMFS, Protected Resources Division, 501 W. Ocean Blvd., Suite 4200, Long Beach, California, 90802-4213. You may hand-deliver written comments to our office during normal business hours at the address given above.

• Fax: 562-980-4027.

FOR FURTHER INFORMATION CONTACT:

Melissa Neuman, NMFS, Southwest Region, (562) 980-4115; or Lisa Manning, NMFS, Office of Protected Resources, (301) 713-1401.

SUPPLEMENTARY INFORMATION:

Background

On April 6, 2005, NMFS proposed threatened status for the Southern DPS of green sturgeon under the ESA (70 FR 17386). The Southern DPS of green sturgeon includes coastal and Central Valley populations south of the Eel River, with the only known population in the Sacramento River. The public comment period for this proposal opened on April 6, 2005, and was originally scheduled to close on July 5, 2005. NMFS is extending the deadline for written comments to coincide with the date of the public hearing (July 6, 2005).

Public Hearing

Joint U.S. Department of Commerce and U.S. Department of the Interior ESA implementing regulations state that the Secretary shall promptly hold at least one public hearing if any person requests one within 45 days of publication of a proposed regulation to list a species or to designate critical habitat (see 50 CFR 424.16(c)(3)). Although no requests were received, NMFS is holding a public hearing to provide an additional opportunity for the public and other interested parties to comment on the subject proposal. One public hearing will be held in California on the specific date and at the specific location listed here:

Please be advised that weapons, cameras, and cell phones with cameras are prohibited in the building. Members of the public attempting to enter 650 Capitol Mall with any of these items will be denied access and will be asked to return said item(s) to their vehicle before entering the building.

NMFS has scheduled this hearing to allow affected stakeholders and members of the public the opportunity to provide comments directly to agency staff. However, this public meeting is not the only opportunity for the public to provide input on this proposal. The public and stakeholders are encouraged to provide written input to NMFS on the

proposal (via correspondence, e-mail, fax, and the Internet; see **ADDRESSES**, above) during the public comment period, which closes on July 6, 2005.

References

Copies of the **Federal Register** notices and related materials cited herein are available on the Southwest Region's

website at <http://swr.nmfs.noaa.gov>. or upon request (see **ADDRESSES** section above).

Dated: June 13, 2005.

James H. Lecky,

*Director, Office of Protected Resources,
National Marine Fisheries Service.*

[FR Doc. 05-12105 Filed 6-17-05; 8:45 am]

BILLING CODE 3510-22-S

Notices

Federal Register

Vol. 70, No. 117

Monday, June 20, 2005

This section of the FEDERAL REGISTER contains documents other than rules or proposed rules that are applicable to the public. Notices of hearings and investigations, committee meetings, agency decisions and rulings, delegations of authority, filing of petitions and applications and agency statements of organization and functions are examples of documents appearing in this section.

DEPARTMENT OF AGRICULTURE

Submission for OMB Review; Comment Request

June 14, 2005.

The Department of Agriculture has submitted the following information collection requirement(s) to OMB for review and clearance under the Paperwork Reduction Act of 1995, Pub. L. 104-13. Comments regarding (a) Whether the collection of information is necessary for the proper performance of the functions of the agency, including whether the information will have practical utility; (b) the accuracy of the agency's estimate of burden including the validity of the methodology and assumptions used; (c) ways to enhance the quality, utility and clarity of the information to be collected; (d) ways to minimize the burden of the collection of information on those who are to respond, including through the use of appropriate automated, electronic, mechanical, or other technological collection techniques or other forms of information technology should be addressed to: Desk Officer for Agriculture, Office of Information and Regulatory Affairs, Office of Management and Budget (OMB), *OIRA_Submission@OMB.EOP.GOV* or fax (202) 395-5806 and to Departmental Clearance Office, USDA, OCIO, Mail Stop 7602, Washington, DC 20250-7602. Comments regarding these information collections are best assured of having their full effect if received within 30 days of this notification. Copies of the submission(s) may be obtained by calling (202) 720-8681.

An agency may not conduct or sponsor a collection of information unless the collection of information displays a currently valid OMB control number and the agency informs potential persons who are to respond to the collection of information that such persons are not required to respond to the collection of information unless it

displays a currently valid OMB control number.

Farm Service Agency

Title: Dairy Disaster Assistance Payment Program (DDAP).

OMB Control Number: 0560-NEW.

Summary of Collection: The 2004 Dairy Disaster Assistance Payment (DDAP) Program is administered and implemented under the general direction of and supervision of the Farm Service Agency through the State and County Committees in Counties declared disaster by the President due to hurricanes in 2004. Section 103 of the Military Construction Appropriations and Emergency Hurricane Supplemental Appropriations Act of 2005 authorizes the DDAP (Pub. L. 108-324), which provide for the Secretary of Agriculture to make payments to dairy producers for dairy production and spoilage losses in counties declared a disaster by the President of the United States in 2004 due to hurricanes.

Need and Use of the Information: The objective of the program is to make direct payments to dairy producers to help them recover from devastating losses and weather the current economic crisis that has resulted from the 2004 hurricanes. The information collected on CCC-742, 2004 Dairy Disaster Assistance Payment Program Application, will be used to establish eligibility and payment amounts. Without the information, there would be no way to implement the program, account for funds issued, or ensure that program requirements are met.

Description of Respondents: Farms; Individuals or households; Business or other-for-profit.

Number of Respondents: 3,000.

Frequency of Responses: Reporting: Annually.

Total Burden Hours: 3,240.

Ruth Brown,

Departmental Information Collection Clearance Officer.

[FR Doc. 05-12058 Filed 6-17-05; 8:45 am]

BILLING CODE 3410-05-P

DEPARTMENT OF COMMERCE

International Trade Administration

Notice of Information Collection

ACTION: Proposed collection; comment request.

Bureau: International Trade Administration.

Title: Commercial Service Client Focus Groups.

SUMMARY: The Department of Commerce, as part of its continuing effort to reduce paperwork and respondent burdens, invites the general public and other Federal agencies to take this opportunity to comment on the continuing information collections, as required by the Paperwork Reduction Act of 1995, Public Law 104-13 (44 U.S.C. 3506 (2) (A)).

DATES: Written comments must be submitted on or before August 19, 2005.

ADDRESSES: Direct all written comments to Diana Hynek, Departmental Paperwork Clearance Officer, Department of Commerce, Room 6625, 14th & Constitution Avenue, NW., Washington, DC 20230. E-mail: *dHynek@doc.gov*.

FOR FURTHER INFORMATION CONTACT:

Request for additional information or copies of the information collection instrument and instructions should be directed to: Joseph Carter, 14th & Constitution Avenue, NW., Washington, DC 20230; Phone number: (202) 482-3342; E-mail: *joseph.carter@mail.doc.gov*.

SUPPLEMENTARY INFORMATION:

I. Abstract

The International Trade Administration's U.S. Commercial Service is mandated by Congress to help U.S. businesses, particularly small and medium-sized companies, export their products and services to global markets.

As part of its mission, the U.S. Commercial Service currently uses "Quality Assurance Surveys" to collect feedback from the U.S. business clients it serves. These surveys ask the client to evaluate the U.S. Commercial Service on its customer service provision. Results from the surveys are used to make improvements to the agency's business processes in order to provide better and more effective export assistance to U.S. companies. In

addition to collecting client feedback through Quality Assurance Surveys, the U.S. Commercial Service would like to institutionalize client focus groups as another mechanism to obtain further client feedback and substantiate customer service trends we are seeing in the surveys. Client focus groups will enrich the quantitative data of surveys by providing a qualitative context for the trends that emerge. The purpose of the attached client focus group questioning routes is to collect feedback from U.S. businesses that receive export assistance services from the U.S. Commercial Service. In providing these services, the U.S. Commercial Service promotes the goods and services of small and medium-sized U.S. businesses in foreign markets.

II. Method of Collection

Recruit firms over phone using Commercial Service domestic offices (USEACs). Data collection will be conducted during face-to-face interview forums (6–8 participants per focus group) by a client focus group moderator who will transcribe via computer. All comments from participants will be anonymous

III. Data

OMB Number: 0625–XXXX.

Form Number: ITA–XXXX.

Type of Review: Regular Submission.

Affected Public: U.S. companies that are recruited by the U.S. Commercial Service.

Estimated Number of Respondents: 96.

Estimated Time Per Response: 10 minutes.

Estimated Total Annual Burden Hours: 192 hours.

Estimated Total Annual Costs: The estimated annual cost for this collection is \$6720.00.

IV. Request for Comments

Comments are invited on (a) Whether the proposed collection of information is necessary for proper performance of the functions of the agency, including whether the information shall have practical utility; (b) the accuracy of the agency's estimate of the burden (including hours and costs) of the proposed collection of information; (c) ways to enhance the quality, utility, and clarity of the information to be collected; and (d) ways to minimize the burden of the collection of information on respondents, including through the use of automated collection techniques or forms of information technology. Comments submitted in response to this notice will be summarized and/or included in the request for OMB

approval of this information collection; they also will become a matter of public record.

Dated: June 14, 2005.

Madeleine Clayton,

Management Analyst, Office of the Chief Information Officer.

[FR Doc. E5–3149 Filed 6–17–05; 8:45 am]

BILLING CODE 3510–FP–P

DEPARTMENT OF COMMERCE

International Trade Administration

North American Free-Trade Agreement, Article 1904; NAFTA Panel Reviews; Request for Panel Review

AGENCY: NAFTA Secretariat, United States Section, International Trade Administration, Department of Commerce.

ACTION: Correction to Notice of First Request for Panel Review.

SUMMARY: The Notice of First Request in NAFTA Case No. USA–CDA–2005–1904–04 published in the **Federal Register** on June 13, 2005 listed an incorrect date for the first request filing on behalf of Abitibi-Consolidated Company of Canada (formerly known as Donohue Fores Products Inc.), Produits Forestiers Petit Paris Inc., Produits Forestiers la Tuque Inc., and Societe en Commandite Scierie Opitciwan. The correct date of filing was May 31, 2005.

Dated: June 13, 2005.

Caratina L. Alston,

United States Secretary, NAFTA Secretariat.

[FR Doc. 05–12045 Filed 6–17–05; 8:45 am]

BILLING CODE 3510–GT–P

DEPARTMENT OF COMMERCE

National Institute of Standards and Technology

Proposed Information Collection; Comment Request; NIST Three-Year Generic Request for Customer Service-Related Data Collections

ACTION: Notice.

SUMMARY: The Department of Commerce (DOC), as part of its continuing effort to reduce paperwork and respondent burden, invites the general public and other Federal agencies to comment on the continuing and proposed information collection, as required by the Paperwork Reduction Act of 1995, Pub. L. 104–13 (44 U.S.C. 3506(c)(2)(A)).

DATES: Written comments must be submitted on or before August 19, 2005.

ADDRESSES: Direct all written comments to Diana Hynek, Departmental Paperwork Clearance Officer, Department of Commerce, Room 6625, 14th and Constitution Avenue, NW., Washington, DC 20230 (or via the Internet at dHynek@doc.gov).

FOR FURTHER INFORMATION CONTACT:

Requests for additional information or a copy of the collection instrument and instructions should be directed to Ami Carbaugh, Management Analyst, NIST, 301–975–4064 or via e-mail to ami.carbaugh@nist.gov.

SUPPLEMENTARY INFORMATION:

I. Abstract

In accordance with Executive Order 12862, the National Institute of Standards and Technology (NIST), a non-regulatory agency of the Department of Commerce, proposes to conduct a number of surveys, both quantitative and qualitative.

The surveys will be designed to determine the type and quality of the products, services, and information our key customers want and expect, as well as their satisfaction with and awareness of existing products, services, and information. In addition, NIST proposes other customer service satisfaction data collections that include, but may not be limited to focus groups, reply cards that accompany product distributions, and web-based surveys and dialog boxes that offer customers the opportunity to express their level of satisfaction with NIST products, services, and information and for ongoing dialogue with NIST. NIST will limit its inquiries to data collections that solicit strictly voluntary options and will not collect information that is required or regulated. No assurances of confidentiality will be given. However, it will be completely optional for survey participants to provide their name or affiliation information if they wish to provide comments for which they elect to receive a response. In addition, NIST will not have electronic tracking and will not set cookies for web-based customer responses.

II. Method of Collection

NIST will collect this information by electronic means, as well as by mail, fax, telephone, and person-to-person interaction.

III. Data

OMB Number: 0693–0031.

Form Numbers: None.

Type of Review: Regular submission.

Affected Public: Business or for-profit organizations, individuals or households, not-for-profit institutions.

Estimated Number of Respondents: 12,000.

Estimated Time Per Response: Less than 2 minutes for a response card, and 2 hours for focus group participation. The average estimated response time is expected to be less than 30 minutes.

Estimated Total Annual Respondent Burden Hours: 3,022.

Estimated Total Annual Respondent Cost Burden: \$0.

IV. Request for Comments

Comments are invited on: (a) Whether the proposed collection of information is necessary for the proper performance of the functions of the agency, including whether the information will have practical utility; (b) the accuracy of the agency's estimate of the burden (including hours and cost) of the proposed collection of information; (c) ways to enhance the quality, utility, and clarity of the information to be collected; and (d) ways to minimize the burden of the collection of information on respondents, e.g., the use of automated collection techniques or other forms of information technology.

Comments submitted in response to this notice will be summarized or included in the request for OMB approval of this information collection; they also will become a matter of public record.

Dated: June 14, 2005.

Gwellnar Banks,

Management Analyst, Office of the Chief Information Officer.

[FR Doc. 05-12032 Filed 6-17-05; 8:45 am]

BILLING CODE 3510-13-P

DEPARTMENT OF COMMERCE

National Oceanic and Atmospheric Administration

Proposed Information Collection; Comment Request; Monitoring of Fish Trap Fishing in the Gulf of Mexico

AGENCY: National Oceanic and Atmospheric Administration (NOAA), DOC.

ACTION: Notice.

SUMMARY: The Department of Commerce, as part of its continuing effort to reduce paperwork and respondent burden, invites the general public and other Federal agencies to take this opportunity to comment on proposed and/or continuing information collections, as required by the Paperwork Reduction Act of 1995.

DATES: Written comments must be submitted on or before August 19, 2005.

ADDRESSES: Direct all written comments to Diana Hynek, Departmental Paperwork Clearance Officer, Department of Commerce, Room 6625, 14th and Constitution Avenue, NW., Washington, DC 20230 (or via the Internet at dHynek@doc.gov).

FOR FURTHER INFORMATION CONTACT: Requests for additional information or copies of the information collection instrument and instructions should be directed to Beverly D. Lambert, 727-824-5347 or Beverly.Lambert@noaa.gov.

SUPPLEMENTARY INFORMATION:

I. Abstract

Any person using fish traps to participate in the commercial reef fish fishery in the Gulf of Mexico must make an appointment with NMFS in order for the fish traps to be inspected. This is a one-time requirement. Fishermen will also be required to make telephone reports when initiating and terminating fishing trips. This information is needed to monitor fish trap fishing.

I. Method of Collection

The information is submitted via a toll-free telephone call.

II. Data

OMB Number: 0648-0392.

Form Number: None.

Type of Review: Regular submission.

Affected Public: Business or other for-profit organizations, individuals or households.

Estimated Number of Respondents: 86.

Estimated Time Per Response: 5 minutes.

Estimated Total Annual Burden Hours: 251.

Estimated Total Annual Cost to Public: \$0.

IV. Request for Comments

Comments are invited on: (a) Whether the proposed collection of information is necessary for the proper performance of the functions of the agency, including whether the information shall have practical utility; (b) the accuracy of the agency's estimate of the burden (including hours and cost) of the proposed collection of information; (c) ways to enhance the quality, utility, and clarity of the information to be collected; and (d) ways to minimize the burden of the collection of information on respondents, including through the use of automated collection techniques or other forms of information technology.

Comments submitted in response to this notice will be summarized and/or included in the request for OMB approval of this information collection;

they also will become a matter of public record.

Dated: June 14, 2005.

Gwellnar Banks,

Management Analyst, Office of the Chief Information Officer.

[FR Doc. 05-12031 Filed 6-17-05; 8:45 am]

BILLING CODE 3510-22-P

DEPARTMENT OF COMMERCE

National Oceanic and Atmospheric Administration

[I.D. 031705F]

Fisheries of the Exclusive Economic Zone Off Alaska; Groundfish Fisheries Management in the Bering Sea and Aleutian Islands Management Area and the Gulf of Alaska

AGENCY: National Marine Fisheries Service (NMFS), National Oceanic and Atmospheric Administration (NOAA), Commerce.

ACTION: Approval of amendments to fishery management plans.

SUMMARY: NMFS announces the approval of Amendment 83 to the Fishery Management Plan (FMP) for Groundfish of the Bering Sea and Aleutian Islands Management Area (BSAI) and Amendment 75 to the FMP for Groundfish of the Gulf of Alaska (GOA). The amendments make housekeeping revisions to the FMPs. The revisions update harvest, ecosystem, and socioeconomic information, consolidate text, and reorganize the documents. The intent of this action is to update information in the FMPs and to make them easier to read. This action promotes the goals and objectives of the Magnuson-Stevens Fishery Conservation and Management Act (Magnuson-Stevens Act), the FMPs, and other applicable laws.

DATES: The amendments were approved on June 13, 2005.

ADDRESSES: Copies of Amendments 83 and 75 are available from the Sustainable Fisheries Division, Alaska Region, NMFS, P.O. Box 21668, Juneau, AK 99802, Attn: Lori Durall, or from the Alaska Region website at <http://www.fakr.noaa.gov>.

FOR FURTHER INFORMATION CONTACT: Melanie Brown, 907-586-7228 or melanie.brown@noaa.gov.

SUPPLEMENTARY INFORMATION: The Magnuson-Stevens Act requires that each Regional Fishery Management Council submit any FMP amendment it prepares to NMFS for review and approval, disapproval, or partial

approval by the Secretary of Commerce (Secretary). The North Pacific Fishery Management Council (Council) prepared and the Secretary approved the FMP for Groundfish of the GOA in 1978 and the FMP for the Groundfish Fishery of the BSAI in 1981. Both FMPs have been amended numerous times.

Amendments 83 and 75 revise the FMPs by (1) updating harvest, ecosystem, and socioeconomic information, (2) consolidating text, and (3) reorganizing the documents. These revisions update information in the FMPs and make them easier to read.

Amendments 83 and 75 also revise the harvest specifications process set forth in the FMPs to be consistent with Amendments 81 and 74 to the groundfish FMPs (69 FR 31091, June 2, 2004). Amendments 81 and 74 were approved by the Secretary on August 23, 2004, and added new policy objectives to the FMPs, including the objective to adopt conservative harvest levels for multi-species and single species fisheries. Amendments 83 and 75 revise the FMPs' description of the harvest specifications process by requiring total allowable catch for species or species groups to be set equal to or less than the acceptable biological catch. This revision ensures that harvest levels are conservative and consistent with the FMP management policy and objectives to prevent overfishing.

Response to Comments

A notice of availability (NOA) for Amendments 83 and 75 to the FMPs, which described the proposed amendments and invited comments from the public, was published in the **Federal Register** on March 24, 2005, (70 FR 15067). The comment period ended May 23, 2005. NMFS received one comment which is summarized and responded to below.

Comment: Insufficient information is provided in the NOA. This proposed action should be republished with more explanation.

Response: The NOA provided a description of the action and several methods of receiving more detailed information. As explained in the NOA, the action is primarily housekeeping revisions that do not substantively change the FMPs. The only substantive change is the limitation on setting total allowable catch, which was explained in detail in the NOA.

The intent of a NOA is to provide the public with notice of a pending decision by the Secretary and to allow for prior public review and comment. The details of proposed FMP amendments are readily available, if more information is needed beyond that provided in the

NOA. Because the action was described in enough detail in the NOA to allow the public to understand the nature of the action and additional information was available by mail, phone, NMFS Alaska Region website, and NMFS staff contacts listed in the NOA, the NOA was sufficient to notify the public of the proposed action and to allow for public comments. Therefore, no additional **Federal Register** notice is needed for this action.

Dated: June 14, 2005.

Anne M. Lange

Acting Director, Office of Sustainable Fisheries, National Marine Fisheries Service.

[FR Doc. 05-12104 Filed 6-17-05; 8:45 am]

BILLING CODE 3510-22-S

DEPARTMENT OF COMMERCE

National Oceanic and Atmospheric Administration

DEPARTMENT OF THE INTERIOR

Fish and Wildlife Service

[I.D. 052605A]

Marine Mammals and Endangered Species; National Marine Fisheries Service File No. 1008-1637; U.S. Fish and Wildlife Service File No. MA100875

AGENCIES: National Marine Fisheries Service (NMFS), National Oceanic and Atmospheric Administration (NOAA), Commerce; U.S. Fish and Wildlife Service, Interior.

ACTION: Receipt of application.

SUMMARY: Notice is hereby given that John Wise, Ph.D., Maine Center for Toxicology and Environmental Health, University of Southern Maine, P.O. Box 9300, Portland, ME 04104, has applied in due form for an amendment to Permit No. 1008-1637-01.

DATES: Written, telefaxed, or e-mail comments must be received on or before July 20, 2005.

ADDRESSES: The application and related documents are available for review upon written request or by appointment (See **SUPPLEMENTARY INFORMATION**).

Written comments or requests for a public hearing on this application should be mailed to the Chief, Permits, Conservation and Education Division, F/PR1, Office of Protected Resources, NMFS, 1315 East-West Highway, Room 13705, Silver Spring, MD 20910. Those individuals requesting a hearing should set forth the specific reasons why a hearing on this particular request would be appropriate.

Comments may also be submitted by facsimile at (301) 427-2521, provided the facsimile is confirmed by hard copy submitted by mail and postmarked no later than the closing date of the comment period.

Comments may also be submitted by e-mail. The mailbox address for providing email comments is *NMFS.Pr1Comments@noaa.gov*. Include in the subject line of the e-mail comment the following document identifier: File No. 1008-1637/MA100875.

FOR FURTHER INFORMATION CONTACT:

Amy Sloan or Jennifer Skidmore, Office of Protected Resources, NMFS, (301) 713-2289.

SUPPLEMENTARY INFORMATION: The subject permit amendment is requested under the authority of the Marine Mammal Protection Act of 1972, as amended (MMPA; 16 U.S.C. 1361 *et seq.*); the Regulations Governing the Taking and Importing of Marine Mammals (50 CFR parts 18 and 216); the Endangered Species Act of 1973, as amended (ESA; 16 U.S.C. 1531 *et seq.*); and the regulations governing the taking, importing, and exporting of endangered and threatened species (50 CFR parts 17 and 222-226).

Permit No. 1008-1637-01 authorizes Dr. Wise to receive and import and export (to and from Canada) hard and soft parts from all marine mammal species under NMFS jurisdiction for purposes of developing cell lines to determine tissue levels of metals in marine mammal species and to establish a national resource of cell lines for use as model systems in the investigation of various factors related to marine mammal health (e.g., toxicity of metals, virology, etc.). The cell lines may not be sold for profit or used for commercial purposes. Marine mammal parts may be obtained and cell lines developed from the following sources: import from stranded dead marine mammals collected as part of government-authorized marine mammal stranding response operations along the coast of British Columbia, Canada; stranded dead marine mammals in the United States (U.S.); marine mammals that have died during rehabilitation efforts in the U.S.; animals killed during subsistence harvests; soft parts that are discharged naturally by a living threatened or endangered species in the wild; animals that died incidental to commercial fishing if such taking is legal, or other legal operations of the U.S. and Canada; and specimens collected during permitted research activities in the U.S. Exports to Canada of such parts or cell lines are authorized.

The applicant requests authorization to (1) import and export parts and cell lines worldwide; and (2) add USFWS species to the permit, including walrus (*Odobenus rosmarus*), polar bear (*Ursus maritimus*), northern sea otter (*Enhydra lutris lutris*), southern sea otter (*Enhydra lutris nereis*), marine otter (*Lontra felina*), dugong (*Dugong dugon*), West Indian manatee (*Trichechus manatus*), Amazonian manatee (*Trichechus inunguis*), and West African manatee (*Trichechus senegalensis*). The applicant requests a 5-year amendment.

In compliance with the National Environmental Policy Act of 1969 (42 U.S.C. 4321 *et seq.*), an initial determination has been made that the activity proposed is categorically excluded from the requirement to prepare an environmental assessment or environmental impact statement.

Concurrent with the publication of this notice in the **Federal Register**, NMFS is forwarding copies of this application to the Marine Mammal Commission and its Committee of Scientific Advisors.

Documents may be reviewed in the following locations:

Permits, Conservation and Education Division, Office of Protected Resources, NMFS, 1315 East-West Highway, Room 13705, Silver Spring, MD 20910; phone (301) 713-2289; fax (301) 427-2521;

Northwest Region, NMFS, 7600 Sand Point Way NE, BIN C15700, Bldg. 1, Seattle, WA 98115-0700; phone (206) 526-6150; fax (206) 526-6426;

Alaska Region, NMFS, P.O. Box 21668, Juneau, AK 99802-1668; phone (907) 586-7221; fax (907) 586-7249;

Southwest Region, NMFS, 501 West Ocean Blvd., Suite 4200, Long Beach, CA 90802-4213; phone (562) 980-4001; fax (562) 980-4018;

Pacific Islands Region, NMFS, 1601 Kapiolani Blvd., Rm 1110, Honolulu, HI 96814-4700; phone (808) 973-2935; fax (808) 973-2941;

Northeast Region, NMFS, One Blackburn Drive, Gloucester, MA 01930-2298; phone (978) 281-9200; fax (978) 281-9371;

Southeast Region, NMFS, 263 13th Avenue South, St. Petersburg, FL 33701; phone (727) 824-5312; fax (727) 824-5309; and

U.S. Fish and Wildlife Service, Division of Management Authority, 4401 North Fairfax Drive, Room 700, Arlington, VA 22203 (1-800-358-2104).

Dated: June 14, 2005.

Stephen L. Leathery,

Chief, Permits, Conservation and Education Division, Office of Protected Resources, National Marine Fisheries Service.

Dated: June 14, 2005.

Charlie R. Chandler,

Chief, Branch of Permits, Division of Management Authority, U.S. Fish and Wildlife Service.

[FR Doc. 05-12107 Filed 6-17-05; 8:45 am]

BILLING CODE 3510-22-S

DEPARTMENT OF COMMERCE

National Oceanic and Atmospheric Administration

[I.D. 040705B]

Notice of Availability of Final Stock Assessment Reports

AGENCY: National Marine Fisheries Service (NMFS), National Oceanic and Atmospheric Administration (NOAA), Commerce.

ACTION: Notice of availability; response to comments.

SUMMARY: NMFS has incorporated public comments into revisions of marine mammal stock assessment reports (SARs) and the guidelines for preparing marine mammal stock assessment reports. The 2004 final SARs and the revised guidelines are now complete and available to the public.

ADDRESSES: Send requests for copies of reports or revised guidelines to: Chief, Marine Mammal Conservation Division, Office of Protected Resources, National Marine Fisheries Service, 1315 East-West Highway, Silver Spring, MD 20910-3226, Attn: Stock Assessments. Copies of the Pacific Regional SARs may be requested from Cathy Campbell, Southwest Regional Office, NMFS, 501 West Ocean Boulevard, Long Beach, CA 90802-4213.

FOR FURTHER INFORMATION CONTACT: Tom Eagle, Office of Protected Resources, 301-713-2322, ext. 105, e-mail Tom.Eagle@noaa.gov or Cathy Campbell, 562-980-4060, email Cathy.E.Campbell@noaa.gov.

SUPPLEMENTARY INFORMATION:

Electronic Access

Stock assessment reports and the revised guidelines for preparing them are available via the Internet at http://www.nmfs.noaa.gov/pr/PR2/Stock_Assessment_Program/sars.html.

Background

Section 117 of the Marine Mammal Protection Act (MMPA) (16 U.S.C. 1361 *et seq.*) requires NMFS and the U.S. Fish and Wildlife Service (FWS) to prepare stock assessments for each stock of marine mammals occurring in waters under the jurisdiction of the United States. These reports must contain information regarding the distribution and abundance of the stock, population growth rates and trends, estimates of annual human-caused mortality and serious injury from all sources, descriptions of the fisheries with which the stock interacts, and the status of the stock. Initial reports were completed in 1995.

The MMPA requires NMFS and FWS to review the SARs at least annually for strategic stocks and stocks for which significant new information is available, and at least once every 3 years for non-strategic stocks. NMFS and the FWS are required to revise a SAR if the status of the stock has changed or can be more accurately determined. NMFS, in conjunction with the Alaska, Atlantic, and Pacific Scientific Review Groups (SRGs), reviewed the status of marine mammal stocks as required and revised reports in the Pacific region.

The SARs in the Alaska and Atlantic regions were reviewed along with new information on these stocks of marine mammals. Although new abundance or mortality estimates were available for some stocks in these regions, the status of no stocks in these regions would be changed. Furthermore, NMFS could not determine the status of marine mammal stocks in the Alaska or Atlantic regions with substantially improved accuracy. Completion of the draft 2004 reports was delayed due to several factors, and the draft 2005 reports are now being completed. Therefore, the reports in these two regions were not revised, and updated information will be included in the 2005 reports.

NMFS convened a workshop in June 1994, including representatives from NMFS, FWS, and the Marine Mammal Commission (Commission), to prepare draft guidelines for preparing SARs. The report of this workshop (Barlow *et al.*, 1995) included the guidelines for preparing SARs and a summary of the discussions upon which the guidelines were based. The draft guidelines were made available, along with the initial draft SARs, for public review and comment (59 FR 40527, August 9, 1995).

In 1996, NMFS convened a second workshop to review the guidelines and to recommend changes, if appropriate, to them. Workshop participants included representatives from NMFS,

FWS, the Commission, and the three regional SRGs. The report of that workshop (Wade and Angliss, 1997) summarized the discussion at the workshop and contained revised guidelines. The revised guidelines represented minor changes from the initial version. The revised guidelines were made available for public review and comment along with revised stock assessment reports on January 21, 1997 (62 FR 3005).

In September 2003, NMFS again convened a workshop to review guidelines for SARs and again has proposed minor changes to the guidelines. Participants at the workshop included representatives of NMFS, FWS, the Commission, and the regional SRGs. Changes to the guidelines resulting from the 2003 workshop were directed primarily toward identifying population stocks and estimating PBR for declining stocks of marine mammals.

Comments and Responses

The draft 2004 SARs and the proposed revisions to guidelines were available for public review (69 FR 67541, November 18, 2004) for a 90-day comment period, which ended on February 16, 2005. NMFS received five letters (two from the Commission, one each from the Center for Biological Diversity and the Ocean Conservancy, and one from a marine mammal scientist) with substantive comments on the Pacific SARs or on the proposed revisions of guidelines for preparing stock assessment reports. Two letters addressed Pacific SARs, and three addressed the proposed revisions to the guidelines.

Unless otherwise noted, comments suggesting editorial or clarifying changes were included in the reports. Such editorial comments and responses to them are not included in the summary of comments and responses below.

Alaska and Atlantic Regional Reports

Comment 1: We are disappointed that NMFS is declining to follow the mandates of the MMPA and prepare new stock assessment reports for the Alaska and Atlantic/Gulf regions. The MMPA explicitly requires that NMFS review and, if necessary, revise the stock assessments at least once annually for stocks which are specified as strategic stocks; at least annually for stocks for which significant new information is available; and at least once every 3 years for all other stocks. Given that we are already well into 2005, it seems too late for NMFS to prepare new draft 2004 SARs for the Atlantic and Alaska regions. However,

we hope that this will not become a pattern and that NMFS will promptly finalize the 2004 Pacific SARs and shortly issue proposed 2005 SARs for all three regions.

Response: NMFS followed the mandates of the MMPA in reviewing and revising reports for the Alaska and Atlantic regions, as well as the Pacific region. As the comment notes, the MMPA explicitly requires NMFS to review reports on a specific schedule. If the results of a review indicate that a change is necessary, then NMFS must revise the reports. The conditions for revising the reports are that the status of a stock has changed or that its status could be more accurately determined. No Alaska or Atlantic stocks would have changed status, and no status could be determined with improved accuracy; therefore, NMFS did not update the Alaska and Atlantic regional reports.

In the past, NMFS has updated reports to include the latest information whether or not this information changed the status or allowed the status to be determined with improved accuracy. Because the 2004 reports were updated so late in 2004, NMFS limited its updates to the reports in the Pacific region where significant new information (the results of the first comprehensive cetacean survey in the Hawaii Exclusive Economic Zone) was available. NMFS has updated reports in all three regions in its 2005 reports and will soon have the draft reports available for public review and comment.

Comment 2: Stock assessment reports were not updated in 2004 for the Atlantic and Alaska regions. The proffered reason was that the stocks in this region did not change status or the status could not be determined more accurately. For the Alaska region, however, fishery interactions changed for more than 20 stocks due to the delineation of Alaskan fisheries described in the 2004 List of Fisheries: six major fisheries were split into 25 smaller fisheries based on target species and geographic location, with resulting accounting changes for fishery-specific interactions. As noted in the Commission's comments on the proposed 2005 List of Fisheries, the tally of stocks interacting with the original six fisheries is greater than the tally of stocks killed or seriously injured incidental to the newly-identified 25 fisheries. Revising the reports for Alaska stocks in 2004 may have highlighted this error.

Response: Although NMFS reviewed all reports as required, no stocks changed status, and the status of no

stocks could be determined with improved accuracy in the Alaska and Atlantic regions; therefore, NMFS was not required to revise the reports. NMFS could have, as in the past, updated the reports to include the latest information. However, NMFS determined that leaving the Alaska and Atlantic reports until the 2005 cycle would increase efficiency in the preparation an review of the most recent information for updating the reports (see Comment 3).

Total fishery mortality for each stock of Alaska marine mammals did not change because NMFS split existing fisheries on the basis of target species and location of operation. Rather, the total mortality is partitioned differently; thus, the status of the stocks would not have changed. NMFS will respond to comments on the draft 2005 List of Fisheries in a separate notice in the **Federal Register**.

Comment 3: In its comments on NMFS' 2003 SARs, the Commission noted that the draft 2003 reports were submitted for public review and comment while the regional SRGs were reviewing the draft 2004 reports and expressed concern that the information in the draft 2003 reports would soon be outdated. The fact that NMFS did not update the Atlantic and Alaska stock assessments may have been due to efforts to provide more timely draft reports incorporating the most current data for review and comment.

Response: In its response to the Commission's comment on the draft 2003 reports, NMFS noted that the 2004 draft reports were already late and that 2005 represented the first opportunity to return to its schedule (69 FR 54262, September 8, 2004). NMFS did not update the Alaska and Atlantic SARs in 2004 as a mechanism to get back on its schedule for annual reports in 2005 and to incorporate the latest information available in SARs.

Stock Identification and Definition

Comment 4: We agree that when data indicate a different stock structure or stock boundaries, it is appropriate to include this information as "prospective stocks" within the SARs. We also agree that the SARs should include descriptions of prospective stocks, the evidence for the new stocks, calculations of the prospective PBR and mortality estimates, by source, for each new stock. NMFS should make every effort to secure additional information to make a final determination of the stock structure of prospective stocks. The guidance related to demographic isolation as the basis for identifying stocks of marine mammals and the addition of prospective stocks provide a

conservative and scientifically sound interpretation and approach toward the identification of new stocks and are consistent with the goals and objectives of the MMPA.

Response: NMFS agrees.

Comment 5: We are concerned that by identifying prospective stocks rather than by simply re-designating new stock boundaries, NMFS may delay proper reclassification of these stocks in the SARs. A prospective stock cannot be formally designated as depleted or strategic and would, thus, not gain the statutory protections of the MMPA that a properly designated stock would. It took FWS over 4 years to designate multiple stocks of sea otters in Alaska, and NMFS has long known that harbor seals in the Gulf of Alaska constitute more than one stock but has not designated them as such.

Response: There is nothing simple about re-designating a stock boundary, which requires substantial information to distinguish between adjacent stocks accurately. Therefore, the amount of information required to change a stock boundary is much greater than the amount of information required to indicate that actual population structure is different, generally smaller, than the structure currently identified. In this regard, it was relatively easy for NMFS to obtain data indicating that there may be more than one stock of harbor seals in the Gulf of Alaska; however, identifying new stock boundaries requires more information. A review of the genetics information supporting a revision of Alaska harbor seal stocks has only recently been completed, and NMFS is working with its co-management partners to evaluate the science and other information in revising harbor seal stock structure.

NMFS realizes the limitations of prospective stock identities for management purposes. However, NMFS maintains that identifying prospective stocks has conservation value by showing areas where mortality may be higher than the local aggregation of marine mammals can sustain or where abundance trends indicate the potential for localized depletions. Thus, prospective stocks would be included in SARs as an interim measure during the period when additional information supporting a change in stock identity can be collected, analyzed, and interpreted.

Comment 6: The Commission supports the revised definition of stock (a management unit that identifies a demographically isolated biological population where animals are considered to be demographically isolated if the population dynamics of

the affected group are more a consequence of births and deaths within the group (internal dynamics) rather than by immigration or emigration (external dynamics).) The revisions arguably are in keeping with the definition of stock in the MMPA and the goals of the MMPA; however, we believe that a more rigorous analysis of how the proposed distinctions tie into the applicable statutory definition is needed.

Response: NMFS notes that identifying demographically isolated groups of marine mammals as population stocks is not new with these proposed changes to the guidelines. The original guidelines for preparing stock assessments (Barlow et al., 1995) included stock identities based upon demographic isolation. The initial guidelines did not specifically mention demographic isolation; however, the background information discussed at the first PBR workshop, summarized in Barlow et al. (1995), clearly describes demographic isolation as the basis for stock identity. The first PBR workshop included representatives from NMFS, FWS, and the Commission. The initial guidelines were reviewed by the three regional SRGs when the SRGs were first convened in October 1994 and were made available for public review and comment.

In 1996, NMFS evaluated its initial guidelines in a workshop, including representatives from NMFS, FWS, the Commission, and the regional SRGs, and changed them to explicitly include demographic isolation as a basis for stock identity. Again, the proposed guidelines were made available for public review and comment. Thus, the concept of demographic isolation as the basis for stock identity has been in existence since NMFS and FWS initially complied with MMPA section 117.

The statutory text related to distinct population segments in the Endangered Species Act (ESA) is similar to the MMPA's definition of population stock. NMFS and FWS implement these concepts differently based upon the purposes and policies of the two statutes and on Congressional reports (see responses to Comments 7 and 8).

Comment 7: The Commission believes NMFS should develop criteria for applying the modified guidelines to determine when a population is demographically isolated to an extent that it is a discrete group that warrants recognition as a separate stock and would welcome the opportunity to assist in the development of these criteria.

Response: NMFS is in the process of evaluating how it identifies

management or conservation units under each of its major statutes (the MMPA, the ESA, and the Magnuson-Stevens Fishery Conservation and Management Act). In the preliminary stages of this evaluation, it is becoming apparent that there is wide variation in the degree of structuring or demographic isolation among populations. A key question in the evaluation will be just what degree of isolation or structuring is necessary for groups of marine mammals to be separate stocks. The evaluation will address, among other things, if the approaches NMFS uses are consistent with the language of the statutes, statutory purposes and policies, and pragmatic considerations in implementing its stewardship obligations. If the evaluation suggests improvement in articulating its policies related to marine mammal population structure are warranted, NMFS would use the same steps as were used in the initial development and revision of its guidelines for marine mammal stock assessment. That is, the revision would include close coordination with the Commission, FWS, and the three regional SRGs, and it would include an opportunity for public review and comment before implementing a policy revision.

The comments received on these proposed changes to the guidelines are sufficient to question the proposed interpretation of "interbreed when mature". Therefore, NMFS has removed that statement, and its example related to humpback whales, from the final revised guidelines.

Comment 8: The Commission suggests NMFS carefully consider the relationship of the term "population stock" under the MMPA ("...a group of marine mammals of the same species or smaller taxa in a common spatial arrangement that interbreed when mature.") and the term "species" under the ESA ("...any subspecies of fish or wildlife or plants, and any distinct population segment of any species of vertebrate fish or wildlife which interbreeds when mature.") To the maximum extent practical, the agencies implementing these statutes should adopt compatible definitions of these terms or clearly explain why they are treating them differently. The changes proposed to the definition of stock in the stock assessment guidelines could lead to further distinction of the applicable management unit under the two acts, exacerbating differences in their interpretation and implementation.

Response: NMFS is aware that the definition of "population stock" under the MMPA is very similar to the term

“distinct population segment” within the definition of “species” under the ESA. NMFS and FWS have cooperated in their implementation of these terms in management under the two statutes.

FWS and NMFS jointly developed a policy to identify distinct population segments under the ESA (61 FR 4722, February 7, 1996). The agencies, in consultation with the Commission, also jointly developed its policies for identifying population stocks under the MMPA. These policies were developed with careful consideration of the specific wording of pertinent definitions within the statutes, the purposes and policies of the statutes, and appropriate legislative history.

As noted in Barlow *et al.* (1995) and Wade and Angliss (1977), NMFS and FWS relied heavily upon the purposes and policies of the MMPA, particularly reference to maintaining marine mammal population stocks as functioning elements of their ecosystems, in the policies for identifying population stocks. Consequently, the agencies developed guidelines for identifying population stocks to minimize the potential for localized depletions and concluded that demographic isolation was a key consideration in stock identity. As aggregations of marine mammals become discrete from one another, with evidence for discreteness available from any of several lines of evidence, the groups are recognized as separate population stocks.

As noted in their final policy statement, FWS and NMFS also included a discreteness criterion to identify distinct population segments under the ESA. However, the purposes of the ESA are different from those of the MMPA, and the agencies added a second criterion, significance, to their consideration. Thus, to be considered a distinct population segment, a group of vertebrates would have to be discrete from other aggregations of the same species or subspecies, and it would have to be important (or significant) in an evolutionary sense to the species or subspecies. The significance criterion was based somewhat upon Congressional guidance to list distinct populations segments sparingly and only when the biological evidence indicates that such action is warranted (Senate Report 151, 96th Congress, 1st session). The policy for identifying distinct population segments under the ESA has been legally challenged and has withstood judicial review.

PBR Elements, Mortality, and Status of Stocks

Comment 9: We disagree with NMFS' proposal to label the PBR for declining stocks as “undefined”, including the interpretation, “...a PBR of zero may not reflect the concept of PBR included in the narrative definition. Furthermore, a PBR of zero would be inconsistent with Congress' concerns about the need to establish a procedure that allows for occasional taking of threatened or endangered species incidental to commercial fishing.”

Response: The narrative definition of PBR suggests that if human-caused mortality is less than PBR and the population is below its carrying capacity, the population would grow. In some cases, such population growth is not realized. For example, human-caused mortalities of Hawaiian monk seals and northern fur seals are below the stocks' PBR levels; yet both populations are declining. Even if human-caused mortality were completely eliminated, these stocks would continue to decline; therefore, a calculated value for PBR would conflict with the narrative definition of PBR in the MMPA.

However, the MMPA defines PBR explicitly; therefore, the use of “undefined” is in conflict with wording of the statute. In some cases, a calculated maximum number of marine mammals that may be removed from the stock while allowing the stock to achieve or maintain its OSP cannot be determined; therefore, NMFS has altered the final guidelines to use the term “undetermined” rather than the proposed term “undefined”. NMFS maintains its position that the “undetermined” label for PBR of declining stocks is appropriate in some cases and will include it in the final guidelines. The use of an undetermined PBR will be evaluated on a case-by-case basis and explained in the affected SAR. NMFS agrees that the statement quoted in the comment may be misleading or confusing and removed it from the final guidelines.

Comment 10: We believe that the undefined PBR proposal would undermine rather than further Congressional intent in enacting the MMPA. The purpose of PBR is to establish a scientifically conservative level of mortality and serious injury whereby “the maximum number of animals, not including natural mortalities, that may be removed from a marine mammal stock while allowing that stock to reach or maintain its optimum sustainable population”. If a stock is declining, allowing any level of

take would likely exacerbate that decline, further preventing that stock from achieving its optimum sustainable population (OSP). An undefined PBR does nothing to promote the recovery of that stock; whereas, a PBR of zero makes it clear that the stock cannot sustain any mortality or serious injury.

Response: In the hypothetical sense, the comment is correct that any additional mortality could exacerbate the trend of a declining stock. In a more realistic sense, a low level of human-caused mortality in a declining stock could not be detected from natural variability in mortality.

Establishing a PBR of zero for all declining stocks of marine mammals could have adverse consequences for marine mammal conservation as well as for commercial, defense-related, or recreational activities within marine ecosystems. On one hand, a PBR of zero would highlight even a minor level of incidental mortality as a substantial conservation issue and would, therefore, have the potential to take resources away from other, more immediate, factors affecting the stock. On the other hand, a PBR of zero for all declining stocks of marine mammals would mean that even a very small level of incidental mortality and serious injury could not be authorized under the MMPA. Thus, commercial or recreational opportunity could be diminished with little or no benefit to the affected marine mammal stock or stocks. NMFS, therefore, will maintain the ability to label PBR as undetermined in a limited number of cases, and, when such a label occurs, NMFS will include a justification for it in the affected SAR.

Comment 11: An undefined PBR would undermine and make unworkable the provision of the MMPA that allows the incidental take of threatened and endangered marine mammals. While Congress intended that there be a procedure that would allow for the incidental take by fishermen of small numbers of threatened and endangered marine mammals, that procedure only allows take when it would have a negligible impact on the stock. Because NMFS uses a function of PBR (10 percent of PBR) as a benchmark for negligible impact, an undefined PBR would prevent NMFS from determining what level of take meets this standard.

Response: NMFS has used 10 percent of a stock's PBR as a quantitative approach to estimate a level of mortality and serious injury that would be consistent with the qualitative definition of negligible impact. NMFS traced the use of this approach and described the reasons for deviating from it in previous documents (see 65 FR

35904). Briefly, NMFS determined that mortality limited to 10 percent of a stock's PBR would meet another performance criterion recommended by the Commission for negligible impact determinations (delaying recovery of a depleted stock of marine mammals by no more than 10 percent of the recovery period if the mortality were not occurring).

NMFS has not investigated the limits of mortality or serious injury that would have a negligible impact on a declining stock. However, such an investigation is necessary to establish a policy on levels of mortality of declining stocks that can be authorized. NMFS is initiating research to identify and evaluate the consequences to populations of options for a negligible impact threshold for declining populations and will use a notice-and-comment process in implementing an approach when the initial research is complete.

Comment 12: We believe that in cases where a stock is declining, especially in those cases where the stock may be threatened or endangered, NMFS must establish some level of PBR, and in some cases, a PBR of zero may be most appropriate.

Response: NMFS agrees that in some cases, the appropriate PBR will be zero. The PBR of Western North Atlantic right whales was changed to zero in 2000 to reflect the view that any human-caused mortality would inhibit their potential for recovery. In other cases where populations are declining, a low level of mortality would not necessarily inhibit the stock's potential for recovery, and NMFS has used a number greater than zero as the PBR. For a few cases, it is not known what maximum number of human-related deaths or serious injuries would allow a currently declining population to recover to its OSP. For these few unknown situations, the PBR would be undetermined.

Comment 13: We believe all stocks should have a defined PBR level so human-related mortality can be compared to PBR. In circumstances where a decline is not apparently the result of direct human-related mortality, as with Hawaiian monk seals, the PBR should not be set as "undefined", which would potentially allow high levels of fishery-related mortality to occur. The PBR should instead be set to zero. An undefined PBR could be interpreted as a blank check for fisheries-related mortality, and such a result is incompatible with the purposes of the MMPA.

Response: As noted in responses to other comments, a PBR of zero for declining stocks may be inappropriate for some situations and appropriate for

others. However, an undetermined PBR does not necessarily mean that NMFS could authorize any level of taking for the affected stocks. To authorize the take of threatened or endangered stocks of marine mammals, NMFS would have to determine that incidental mortality and serious injury would have a negligible impact on the stock. When the relatively simple approach of comparing expected mortality and serious injury to a proportion of PBR would not be available because PBR was undetermined, NMFS would include an explanation of why the level of mortality and serious injury expected for the upcoming 3-year period (as allowed under MMPA section 101(a)(5)(E)) would have a negligible impact.

Comment 14: The guidelines for recovery factors in the PBR calculation allow the use of a recovery factor above default levels in certain circumstances. The Commission recommended that default recovery factors be used until such time as NMFS has reviewed situations in which the recovery factor might be raised for stocks of unknown status and has developed evidence-based criteria that ensure such stocks are not further disadvantaged by human-caused mortality.

Response: The guidelines strictly limit the situations in which recovery factors higher than default values can be used. One situation includes cases where estimates of human-caused mortality are relatively unbiased due to high observer coverage. The guidelines also state that recovery factors of 1.0 for stocks of unknown status should be reserved for cases where there is assurance that abundance, net productivity, and mortality are unbiased and where the stock structure is unequivocal.

The other situation occurs when mortality estimates are higher than a PBR calculated with the default recovery factor and the population is increasing (for stocks for which the principal mortality factor is subsistence harvest, the population is not known to be decreasing). For this situation, the guidelines state, "Values other than the defaults for any stock should usually not be used without the approval of the regional [SRG], and scientific justification for the change should be provided in the Report". The current guidelines provide reasonable assurances related to increasing recovery factors from default values in only a few limited situations; therefore, NMFS does not plan to change them at this time.

Comment 15: Regarding NMFS' proposal to assign mortality when dead

animals are observed or reported where stocks are mixed and there is insufficient information to identify which stock dead animals belonged, the Commission recommends that NMFS reconsider its options for attributing deaths to stocks and develop alternatives that do not pose disproportionately larger risks to small, vulnerable stocks.

Response: NMFS agrees that assigning mortality proportional to stock size may cause disproportionate risk for small stocks and, in some cases, will maintain the option to evaluate the impact of the estimated mortality as if all deaths were assigned to a single stock. Consequently, NMFS modified the guidelines to require a discussion of the potential for bias in stock-specific mortality in each affected report.

Comment 16: The Commission reiterated a recommendation from a previous set of comments that 10 percent of a stock's PBR (using northern fur seals, with its PBR of about 12,500, as an example) does not seem to be insignificant and approaching zero, particularly in a case where recent evidence indicates the stock is declining.

Response: The Commission points out one of the difficulties of using a simple calculation to quantify a difficult concept. Although more than 1,000 deaths may seem like a large number, the impact of such a level of mortality would be insignificant to the stock (if it were 10 percent of the stock's PBR). Furthermore, the MMPA uses the term, "zero rate", rather than "zero". In the case of a pinniped stock with default values used for maximum net productivity rate and the recovery factor (0.5 for a stock that is threatened, depleted, or of unknown status), 10 percent of PBR represents 3 animals per 1,000 in the population. Such a rate (3/1,000) is sufficiently small as to be "approaching zero".

Comment 17: In the status of stocks section, the default decision seems to be that stocks are not strategic until information is available, as suggested by the current draft assessments for stocks in the Pacific in which all stocks without population trend and mortality estimates were considered non-strategic, except for those stocks listed as endangered. The Commission recommended NMFS follow its own guidelines and take a more precautionary approach when designating status for stocks for which essential information is lacking.

Response: The guidelines state, "If abundance or human-related mortality levels are truly unknown (or if the fishery-related mortality level is only

available from logbook data), some judgement will be required to make this determination. If the human-caused mortality is believed to be small relative to the stock size based on the best scientific judgement, the stock could be considered as non-strategic. If human-caused mortality is likely to be significant relative to stock size (e.g., greater than the annual production increment) the stock could be considered strategic. In the complete absence of any information on sources of mortality, and without guidance from the Scientific Review Groups, the precautionary principle should be followed and the default stock status should be strategic until information is available to demonstrate otherwise." In some cases, NMFS scientists must make a recommendation for the status of a stock based upon the scientists' best judgement because there is insufficient information available to provide an estimate of abundance or mortality, and the MMPA does not provide for a status of "unknown" when determining whether the stock is strategic or not strategic. In each case, the judgement is reviewed by, and is often discussed with, the affected regional SRG. Therefore, NMFS is following its own guidance.

Pacific Regional Reports

Comment 18: The distribution maps of Hawaiian cetaceans largely reflect the distribution of animals detected during a large-scale vessel survey of Hawaiian waters in 2002 (Barlow, 2003), and sighting data from nearshore surveys might be included to give the reader a better idea of the distribution of some of these species.

Response: An effort will be made to incorporate more comprehensive distribution maps in the next revision of Hawaii stock assessment reports.

Comment 19: The Commission recommended that the agency develop a way of assessing potential interactions between Hawaiian monk seals and the bottomfish fishery because logbook information does not include information on protected species interactions.

Response: An observer program was initiated in this fishery in late 2003 with 33 percent observer coverage. No interactions with monk seals were observed. This information was not available at the time the 2004 draft report was prepared and will be included in the draft 2005 monk seal assessment. The MMPA and implementing regulations require commercial fishers to report all injuries to NMFS within 48 hours of the injury or return from the fishing trip.

Comment 20: Evidence of vessel collision in the form of propeller scars should be mentioned as a possible source of mortality for short-finned pilot whales (Hawaii stock). Photographic ID efforts are being used to determine movements of these animals among the main Hawaiian Islands.

Response: A ship-strike section which describes such vessel interactions has been added to this stock assessment report. Photo-ID information has also been added to this SAR.

Comment 21: There is new genetic and photo-ID data available on the stock structure of bottlenose dolphins around the Hawaiian Islands.

Response: This information was reviewed in January 2005 by the Pacific SRG and was not available at the time the draft 2004 reports were prepared. When genetic analyses are complete, this information will be incorporated into the next stock assessment revision for this stock.

Comment 22: There is information available on the stock structure of rough-tooth dolphins (Hawaii stock) from genetic samples (Formica *et al.*, 2003) and additional information from photographic identification of individuals.

Response: The Formica *et al.* abstract reviewed preliminary information on distinct geographic variation among animals from the Pacific Ocean, Atlantic Ocean, and the Gulf of Mexico, without addressing smaller-scale stock issues around the Hawaiian Islands. The draft 2004 SAR stated that there was currently no information available on stock identity within the north Pacific. Information on the photo-identification catalog of individuals from the main Hawaiian Islands has been added to the Stock Definition and Geographic Range section of this stock assessment report.

Comment 23: The abundance of dwarf sperm whales in Hawaiian waters may be underestimated because of their deep-diving habits, cryptic behavior, small size, and the difficulty in identifying this species beyond the genus level.

Response: Additional text reflecting potential bias in estimating abundance has been added to this SAR.

Comment 24: Beaked whales have been involved in mass stranding events linked to military active sonars, and these types of military activities occur frequently around the Hawaiian Islands.

Response: The Mortality section of the beaked whale SARs contain a discussion of potential mortality or injury related to anthropogenic noise. These discussions have been expanded slightly to include activities using sonar.

Comment 25: A commenter provided additional information on photo-ID work on Blainville's beaked whales around the Hawaiian Islands and noted that this is one species that is sensitive to active military sonar activities.

Response: Information on recent photo-ID work has been included in this SAR.

Comment 26: The Commission recommended updating mortality estimates and ZMRG information related to set gillnets for all harbor porpoise stocks in California, following the closure of that fishery in 2002.

Response: Mortality estimates were updated for the Morro Bay and Monterey Bay stocks through 2002. The San Francisco-Russian River and Northern CA/Southern OR stocks occur outside of the region where the set gillnet fishery has been allowed to operate. Further updates on fishery mortality related to the set gillnet closure will be added in the next revisions of the harbor porpoise stock assessments.

Comment 27: The Commission recommended describing the previous levels of takes of harbor porpoise (Morro Bay stock) in the white seabass set gillnet fishery to allow readers to determine if the current lack of mortality estimates for this fishery warrant concern.

Response: The reference to takes of harbor porpoise in the white seabass gillnet fishery near Morro Bay are for animals taken late in the 1950s (Norris and Prescott, 1961). These takes were documented in 15 fathoms (27 m) of water. Current regulations prohibit gillnets from being fished in waters more shallow than 110 meter, and harbor porpoise in this region are found primarily in waters shallower than 60 meters (Carretta *et al.*, 2001). Because of these depth restrictions, it is expected that harbor porpoise interactions with the white seabass fishery would be near zero. The SAR was modified to reflect this information.

Comment 28: The Commission recommended that the Fisheries Information section of the humpback whale, (Eastern North Pacific stock) be revised to indicate which interactions were considered serious injuries and which of these are reported in Table 1. There was also a recommendation to move the 1997 incident to the Fishery Information section and remove the incident from Table 1 because it does not qualify as a serious injury.

Response: Table 1 of this report summarizes injuries related to line/gear entanglement, even if these are not immediately deemed "serious injuries" at the time the whale was sighted. The

nature of these trailing-gear interactions may result in serious injuries long after the whale is initially sighted. It is unclear at this point whether to classify these as serious injuries or not, but by including them in Table 1, the injuries are effectively tallied as a "take", which is more conservative than excluding them for lack of classification. The 1997 incident of a humpback whale swimming away with a salmon hook and many feet of monofilament falls in this category and is retained in Table 1.

Comment 29: The Commission suggested adding a figure showing population trend data of blue whales (Eastern North Pacific stock) to allow the reader to evaluate the apparent decline suggested under Current Population Trend.

Response: A figure showing line-transect abundance estimates from 1991–2001 in California waters has been added to this SAR to indicate trend.

Dated: June 14, 2005.

James H. Lecky,

*Director, Office of Protected Resources,
National Marine Fisheries Service.*

[FR Doc. 05–12106 Filed 6–17–05; 8:45 am]

BILLING CODE 3510–22–S

DEPARTMENT OF DEFENSE

Office of the Secretary

Submission for OMB Review; Comment Request

ACTION: Notice.

The Department of Defense has submitted to OMB for clearance, the following proposal for collection of information under the provisions of the Paperwork Reduction Act (44 U.S.C. Chapter 35).

DATES: Consideration will be given to all comments received by July 20, 2005.

Title and OMB Number: Survey to Determine Economic Costs and Impact to Employers of Mobilized Reserve Component Members; OMB Control Number 0704–TBE.

Type of Request: New.

Number of Respondents: 2,745.

Responses per Respondent: 1.

Annual Responses: 1,699.

Average Burden per Response: .72.

Annual Burden Hours: 1,223.

Needs and Uses: As the duration and frequency of reliance on Reserve members increases, the number of employers operating with reduced work forces for longer periods is also increasing. Understanding how employer operations are impacted, the adjustments they make to sustain operations, and the cost to make these adjustments is the focus of this research. The self-administered survey will be mailed to a nationally representative sample of United States employers of Guard and Reserve members mobilized since 2002. Collected information will be used to identify unmet needs, to evaluate the economic effects of DoD policy on the civilian economy, and to guide development of or revisions to policy and program initiatives.

Affected Public: Business or other for-profit; not-for-profit institutions; State, local or tribal government.

Frequency: One Time.

Respondent's Obligation: Voluntary.

OMB Desk Officer: Mr. Lewis Oleinick.

Written comments and recommendations on the proposed information collection should be sent to Mr. Oleinick at the Office of Management and Budget, Desk Officer for DoD, Room 10236, New Executive Office Building, Washington, DC 20503.

DoD Clearance Officer: Ms. Patricia Toppings.

Written requests for copies of the information collection proposal should be sent to Ms. Toppings, WHS/ESD Information Management Division, 1225 South Clark Street, Suite 504, Arlington, VA 22202–4326.

Dated: June 7, 2005.

Patricia L. Toppings,

*Alternate OSD Federal Register Liaison
Officer, Department of Defense.*

[FR Doc. 05–12069 Filed 6–17–05; 8:45 am]

BILLING CODE 5001–06–M

DEPARTMENT OF DEFENSE

Office of the Secretary

[Transmittal No. 05–27]

36(b)(1) Arms Sales Notification

AGENCY: Department of Defense, Defense Security Cooperation Agency.

ACTION: Notice.

SUMMARY: The Department of Defense is publishing the unclassified text of a section 36(b)(1) arms sales notification. This is published to fulfill the requirements of section 155 of Pub. L. 104–164 dated July 1996.

FOR FURTHER INFORMATION CONTACT: Ms. J. Hurd, DSCA/OPS–ADMIN, (703) 604–6575.

The following is a copy of a letter to the Speaker of the House of Representatives, Transmittal 05–27 with attached transmittal, policy justification, and Sensitivity of Technology.

Dated: June 14, 2005.

Jeannette Owings-Ballard,

*OSD Federal Register Liaison Officer,
Department of Defense.*

BILLING CODE 5001–06–M



DEFENSE SECURITY COOPERATION AGENCY

WASHINGTON, DC 20301-2800

06 JUN 2005

In reply refer to:
I-05/005532

**The Honorable J. Dennis Hastert
Speaker of the House of Representatives
Washington, D.C. 20515-6501**

Dear Mr. Speaker:

Pursuant to the reporting requirements of Section 36(b)(1) of the Arms Export Control Act, as amended, we are forwarding herewith Transmittal No. 05-27, concerning the Department of the Navy's proposed Letter(s) of Offer and Acceptance to Japan for defense articles and services estimated to cost \$104 million. Soon after this letter is delivered to your office, we plan to notify the news media.

Sincerely,

A handwritten signature in cursive script, reading "Richard J. Millies", is positioned above the printed name and title.

**Richard J. Millies
Deputy Director**

Enclosures:

- 1. Transmittal**
- 2. Policy Justification**
- 3. Sensitivity of Technology**

**Same ltr to: House Committee on International Relations
 Senate Committee on Foreign Relations
 House Committee on Armed Services
 Senate Committee on Armed Services
 House Committee on Appropriations
 Senate Committee on Appropriations**

Transmittal No. 05-27

**Notice of Proposed Issuance of Letter of Offer
Pursuant to Section 36(b)(1)
of the Arms Export Control Act, as amended**

- (i) **Prospective Purchaser:** Japan
- (ii) **Total Estimated Value:**
- | | |
|---------------------------------|----------------------------|
| Major Defense Equipment* | \$100 million |
| Other | \$ <u>4 million</u> |
| TOTAL | \$104 million |
- (iii) **Description and Quantity or Quantities of Articles or Services under Consideration for Purchase:** 40 SM-2 Block IIIB Tactical Standard missiles with MK 13 MOD 0 canisters; 24 SM-2 Block IIIB Telemetry Standard missiles with MK 13 MOD 0 canisters, AN/DKT-71A telemeters, and conversion kits; containers; spare and repair parts; supply support; U.S. Government and contractor technical assistance and other related elements of logistics support.
- (iv) **Military Department:** Navy (ANW and ANX)
- (v) **Prior Related Cases, if any:** numerous FMS cases pertaining to the Standard missiles
- (vi) **Sales Commission, Fee, etc., Paid, Offered, or Agreed to be Paid:** none
- (vii) **Sensitivity of Technology Contained in the Defense Article or Defense Services Proposed to be Sold:** See Annex attached
- (viii) **Date Report Delivered to Congress:** 0 6 JUN 2005

as defined in Section 47(6) of the Arms Export Control Act.

POLICY JUSTIFICATION

Japan - SM-2 Block IIIB Standard Missiles

The Government of Japan has requested a possible sale for 40 SM-2 Block IIIB Tactical Standard missiles with MK 13 MOD 0 canisters; 24 SM-2 Block IIIB Telemetry Standard missiles with MK 13 MOD 0 canisters, AN/DKT-71A telemeters, and conversion kits; containers; spare and repair parts; supply support; U.S. Government and contractor technical assistance and other related elements of logistics support. The estimated cost is \$104 million.

Japan is one of the major political and economic powers in East Asia and the Western Pacific and a key ally of the United States in ensuring the peace and stability of this region. The U.S. Government shares bases and facilities in Japan. It is vital to the U.S. national interest to assist Japan to develop and maintain a strong and ready self-defense capability, which will contribute to an acceptable military balance in the area. This proposed sale is consistent with these U.S. objectives and with the 1960 Treaty of Mutual Cooperation and Security.

The SM-2 missiles will be used on ships of the Japan Maritime Self Defense Force fleet and will provide enhanced capabilities in providing defense of critical sea-lanes of communication. Japan has already integrated the SM-2 Block IIIB in to ship combat systems. It maintains two Intermediate-Level Maintenance Depots capable of maintaining and supporting the SM-2 and is upgrading these facilities to maintain and support the newest SM variants. Japan will have no difficulty absorbing these additional missiles.

The proposed sale of this equipment and support will not affect the basic military balance in the region.

The principle contractors will be: Raytheon Missile Systems Company in Tucson, Arizona; Raytheon Company of Camden, Arkansas; United Defense, Limited Partnership (UDLP) of Minneapolis, Minnesota; and UDLP of Aberdeen, South Dakota. There are no offset agreements proposed in connection with this potential sale.

Implementation of this proposed sale will not require the assignment of any additional U.S. Government or contractor representatives to Japan.

There will be no adverse impact on U.S. defense readiness as a result of this proposed sale.

Transmittal No. 05-27**Notice of Proposed Issuance of Letter of Offer
Pursuant to Section 36(b)(1)
of the Arms Export Control Act****Annex
Item No. vii****(vii) Sensitivity of Technology:**

1. The possible sale of SM-2 Block IIIB Standard missiles will result in the transfer of sensitive technology and information as well as classified and unclassified defense equipment and technical data. The Standard missile hardware guidance section and target detection device are classified Secret. The warhead, rocket motor, steering control section, safe and arming device, auto-pilot battery unit, and telemeter are classified Confidential. Certain operating frequencies and performance characteristics are classified Secret. Confidential documentation to be provided includes: parametric documents, general performance data, firing guidance, kinematics information, Intermediate Maintenance Activity (IMA)-level maintenance, and flight analysis procedures.

2. If a technologically advanced adversary were to obtain knowledge of the specific hardware and software elements, the information could be used to develop countermeasures which might reduce weapon system effectiveness or be used in the development of a system with similar or advanced capabilities.

[FR Doc. 05-12082 Filed 6-17-05; 8:45 am]
BILLING CODE 5001-06-C

DEPARTMENT OF DEFENSE**Office of the Secretary****Meeting Notice**

AGENCY: DoD, Retirement Board of Actuaries.

ACTION: Notice of meeting.

SUMMARY: A meeting of the Board has been scheduled to execute the provisions of Chapter 74, Title 10, United States Code (10 U.S.C. 1464 et. seq.), The Board shall review DoD actuarial methods and assumptions to be used in the valuation of the Military Retirement System. Persons desiring to: (1) attend the DoD Retirement Board of Actuaries meeting, or (2) make an oral presentation or submit a written

statement for consideration at the meeting, must notify Inger Pettygrove at (703) 696-7413 by July 8, 2005.

Notice of this meeting is required under the Federal Advisory Committee Act.

DATES: August 11, 2005, 1 p.m. to 5 p.m.

ADDRESSES: 4040 N. Fairfax Drive, Suite 270, Arlington, VA 22203.

FOR FURTHER INFORMATION CONTACT: Inger Pettygrove, DoD Office of the Actuary, 4040 N. Fairfax Drive, Suite 308, Arlington, VA 22203, (703) 696-7413.

Dated: June 14, 2005.

Jeannette Owings-Ballard,
OSD Federal Register Liaison Officer,
Department of Defense.

[FR Doc. 05-12085 Filed 6-17-05; 8:45 am]

BILLING CODE 5001-06-P

DEPARTMENT OF DEFENSE**Office of the Secretary****Revised Non-Foreign Overseas Per Diem Rates**

AGENCY: DoD, Per Diem, Travel and Transportation Allowance Committee.

ACTION: Notice of revised non-foreign overseas per diem rates.

SUMMARY: The Per Diem, Travel and Transportation Allowance Committee is publishing Civilian Personnel Per Diem Bulletin Number 240. This bulletin lists revisions in the per diem rates prescribed for U.S. Government employees for official travel in Alaska, Hawaii, Puerto Rico, the Northern Mariana Islands and Possessions of the United States. AEA changes announced in Bulletin Number 194 remain in effect. Bulletin Number 240 is being published in the **Federal Register** to assure that

travelers are paid per diem at the most current rates.

EFFECTIVE DATE: June 1, 2005.

SUPPLEMENTARY INFORMATION: This document gives notice of revisions in per diem rates prescribed by the Per Diem Travel and Transportation Allowance Committee for non-foreign

areas outside the continental United States. It supersedes Civilian Personnel Per Diem Bulletin Number 239.

Distribution of Civilian Personnel Per Diem Bulletins by mail was discontinued. Per Diem Bulletins published periodically in the **Federal Register** now constitute the only

notification of revisions in per diem rates to agencies and establishments outside the Department of Defense. For more information or questions about per diem rates, please contact your local travel office. The text of the Bulletin follows:

BILLING CODE 5001-06-M

Maximum Per Diem Rates for official travel in Alaska, Hawaii, the Commonwealths of Puerto Rico and the Northern Mariana Islands and Possessions of the United States by Federal Government civilian employees.

LOCALITY	MAXIMUM LODGING AMOUNT	M&IE RATE	MAXIMUM PER DIEM RATE	EFFECTIVE DATE
	(A) +	(B) =	(C)	
THE ONLY CHANGES IN CIVILIAN BULLETIN 240 ARE UPDATES TO THE RATES FOR JUNEAU, TOK AND PETERSBURG, ALASKA; GUAM; AND NORTHERN MARIANA ISLANDS. (UPDATED 06/01/05)				
ALASKA				
ADAK	120	79	199	07/01/2003
ANCHORAGE [INCL NAV RES]				
05/01 - 09/15	170	89	259	06/01/2004
09/16 - 04/30	95	81	176	06/01/2004
BARROW	159	95	254	05/01/2002
BETHEL	119	77	196	06/01/2004
BETTLES	135	62	197	10/01/2004
CLEAR AB	80	55	135	09/01/2001
COLD BAY	90	73	163	05/01/2002
COLDFOOT	135	71	206	10/01/1999
COPPER CENTER				
05/16 - 09/15	109	63	172	07/01/2003
09/16 - 05/15	99	63	162	07/01/2003
CORDOVA				
05/01 - 09/30	110	74	184	04/01/2005
10/01 - 04/30	85	72	157	04/01/2005
CRAIG				
04/15 - 09/14	125	64	189	04/01/2005
09/15 - 04/14	95	61	156	04/01/2005
DEADHORSE	95	67	162	05/01/2002
DELTA JUNCTION	89	75	164	06/01/2004
DENALI NATIONAL PARK				
06/01 - 08/31	114	60	174	04/01/2005
09/01 - 05/31	80	57	137	04/01/2005
DILLINGHAM	114	69	183	06/01/2004
DUTCH HARBOR-UNALASKA	121	73	194	04/01/2005
EARECKSON AIR STATION	80	55	135	09/01/2001
EIELSON AFB				
05/01 - 09/15	159	88	247	06/01/2004
09/16 - 04/30	75	79	154	06/01/2004
ELMENDORF AFB				
05/01 - 09/15	170	89	259	06/01/2004
09/16 - 04/30	95	81	176	06/01/2004
FAIRBANKS				
05/01 - 09/15	159	88	247	06/01/2004
09/16 - 04/30	75	79	154	06/01/2004
FOOTLOOSE	175	18	193	06/01/2002
FT. GREELY	89	75	164	06/01/2004
FT. RICHARDSON				
05/01 - 09/15	170	89	259	06/01/2004
09/16 - 04/30	95	81	176	06/01/2004
FT. WAINWRIGHT				
05/01 - 09/15	159	88	247	06/01/2004
09/16 - 04/30	75	79	154	06/01/2004
GLENNALLEN				

Maximum Per Diem Rates for official travel in Alaska, Hawaii, the Commonwealths of Puerto Rico and the Northern Mariana Islands and Possessions of the United States by Federal Government civilian employees.

LOCALITY	MAXIMUM LODGING AMOUNT		M&IE RATE	=	MAXIMUM PER DIEM RATE		EFFECTIVE DATE
	(A)	+			(B)	(C)	
05/01 - 09/30	125		73		198		04/01/2005
10/01 - 04/30	89		69		158		04/01/2005
HEALY							
06/01 - 08/31	114		60		174		04/01/2005
09/01 - 05/31	80		57		137		04/01/2005
HOMER							
05/15 - 09/15	125		73		198		04/01/2005
09/16 - 05/14	76		68		144		04/01/2005
JUNEAU							
05/01 - 09/30	120		80		200		06/01/2005
10/01 - 04/30	79		77		156		04/01/2005
KAKTOVIK	165		86		251		05/01/2002
KAVIK CAMP	150		69		219		05/01/2002
KENAI-SOLDOTNA							
05/01 - 08/31	129		82		211		04/01/2005
09/01 - 04/30	79		77		156		04/01/2005
KENNICOTT	189		85		274		04/01/2005
KETCHIKAN							
05/01 - 09/30	135		82		217		04/01/2005
10/01 - 04/30	98		78		176		04/01/2005
KING SALMON							
05/01 - 10/01	225		91		316		05/01/2002
10/02 - 04/30	125		81		206		05/01/2002
KLAWOCK							
04/15 - 09/14	125		64		189		04/01/2005
09/15 - 04/14	95		61		156		04/01/2005
KODIAK	112		80		192		04/01/2005
KOTZEBUE							
05/15 - 09/30	141		86		227		02/01/2005
10/01 - 05/14	135		85		220		02/01/2005
KULIS AGS							
05/01 - 09/15	170		89		259		06/01/2004
09/16 - 04/30	95		81		176		06/01/2004
MCCARTHY	189		85		274		04/01/2005
METLAKATLA							
05/30 - 10/01	98		48		146		05/01/2002
10/02 - 05/29	78		47		125		05/01/2002
MURPHY DOME							
05/01 - 09/15	159		88		247		06/01/2004
09/16 - 04/30	75		79		154		06/01/2004
NOME	120		84		204		04/01/2005
NUIQSUT	180		53		233		05/01/2002
PETERSBURG	80		62		142		06/01/2005
POINT HOPE	130		70		200		03/01/1999
POINT LAY	105		67		172		03/01/1999
PORT ALSWORTH	135		88		223		05/01/2002
PRUDHOE BAY	95		67		162		05/01/2002
SEWARD							
05/01 - 09/30	145		79		224		04/01/2005
10/01 - 04/30	62		71		133		04/01/2005

Maximum Per Diem Rates for official travel in Alaska, Hawaii, the Commonwealths of Puerto Rico and the Northern Mariana Islands and Possessions of the United States by Federal Government civilian employees.

LOCALITY	MAXIMUM LODGING AMOUNT		M&IE RATE		MAXIMUM PER DIEM RATE	EFFECTIVE DATE
	(A)	+	(B)	=	(C)	
SITKA-MT. EDGE CUMBE						
05/01 - 09/30	119		66		185	04/01/2005
10/01 - 04/30	99		64		163	04/01/2005
SKAGWAY						
05/01 - 09/30	135		82		217	04/01/2005
10/01 - 04/30	98		78		176	04/01/2005
SLANA						
05/01 - 09/30	139		55		194	02/01/2005
10/01 - 04/30	99		55		154	02/01/2005
SPRUCE CAPE	112		80		192	04/01/2005
ST. GEORGE	129		55		184	06/01/2004
TALKEETNA	100		89		189	07/01/2002
TANANA	120		84		204	04/01/2005
TOGIAK	100		39		139	07/01/2002
UMIAT	180		107		287	04/01/2005
UNALAKLEET	79		80		159	04/01/2003
VALDEZ						
05/01 - 10/01	129		74		203	04/01/2005
10/02 - 04/30	79		69		148	04/01/2005
WASILLA						
05/01 - 09/30	134		78		212	04/01/2005
10/01 - 04/30	80		73		153	04/01/2005
WRANGELL						
05/01 - 09/30	135		82		217	04/01/2005
10/01 - 04/30	98		78		176	04/01/2005
YAKUTAT	110		68		178	03/01/1999
[OTHER]	80		55		135	09/01/2001
AMERICAN SAMOA						
AMERICAN SAMOA	135		67		202	06/01/2004
GUAM						
GUAM (INCL ALL MIL INSTAL)	135		90		225	06/01/2005
HAWAII						
CAMP H M SMITH	129		96		225	05/01/2005
EASTPAC NAVAL COMP TELE AREA	129		96		225	05/01/2005
FT. DERUSSEY	129		96		225	05/01/2005
FT. SHAFTER	129		96		225	05/01/2005
HICKAM AFB	129		96		225	05/01/2005
HONOLULU (INCL NAV & MC RES CTR)	129		96		225	05/01/2005
ISLE OF HAWAII: HILO	105		80		185	05/01/2005
ISLE OF HAWAII: OTHER	150		92		242	05/01/2005
ISLE OF KAUAI	158		98		256	05/01/2005
ISLE OF MAUI	159		95		254	06/01/2004
ISLE OF OAHU	129		96		225	05/01/2005
KEKAHA PACIFIC MISSILE RANGE FAC	158		98		256	05/01/2005
KILAUEA MILITARY CAMP	105		80		185	05/01/2005
LANAI	400		153		553	05/01/2005
LUALUALEI NAVAL MAGAZINE	129		96		225	05/01/2005
MCB HAWAII	129		96		225	05/01/2005
MOLOKAI	119		95		214	05/01/2005
NAS BARBERS POINT	129		96		225	05/01/2005

Maximum Per Diem Rates for official travel in Alaska, Hawaii, the Commonwealths of Puerto Rico and the Northern Mariana Islands and Possessions of the United States by Federal Government civilian employees.

LOCALITY	MAXIMUM LODGING AMOUNT		M&IE RATE	MAXIMUM PER DIEM RATE	EFFECTIVE DATE
	(A)	+	(B)	=	(C)
PEARL HARBOR [INCL ALL MILITARY]	129		96		05/01/2005
SCHOFIELD BARRACKS	129		96		05/01/2005
WHEELER ARMY AIRFIELD	129		96		05/01/2005
[OTHER]	72		61		01/01/2000
MIDWAY ISLANDS					
MIDWAY ISLANDS [INCL ALL MILITARY]	60		32		05/01/2005
NORTHERN MARIANA ISLANDS					
ROTA	129		88		06/01/2005
SAIPAN	121		91		06/01/2005
TINIAN	85		80		06/01/2005
[OTHER]	55		72		04/01/2000
PUERTO RICO					
BAYAMON					
04/11 - 12/23	155		71		01/01/2000
12/24 - 04/10	195		75		01/01/2000
CAROLINA					
04/11 - 12/23	155		71		01/01/2000
12/24 - 04/10	195		75		01/01/2000
FAJARDO [INCL CEIBA & LUQUILLO]	82		54		01/01/2000
FT. BUCHANAN [INCL GSA SVC CTR,					
04/11 - 12/23	155		71		01/01/2000
12/24 - 04/10	195		75		01/01/2000
HUMACAO	82		54		01/01/2000
LUIS MUNOZ MARIN IAP AGS					
04/11 - 12/23	155		71		01/01/2000
12/24 - 04/10	195		75		01/01/2000
MAYAGUEZ	85		59		01/01/2000
PONCE	96		69		01/01/2000
ROOSEVELT RDS & NAV STA	82		54		01/01/2000
SABANA SECA [INCL ALL MILITARY]					
04/11 - 12/23	155		71		01/01/2000
12/24 - 04/10	195		75		01/01/2000
SAN JUAN & NAV RES STA					
04/11 - 12/23	155		71		01/01/2000
12/24 - 04/10	195		75		01/01/2000
[OTHER]	62		57		01/01/2000
VIRGIN ISLANDS (U.S.)					
ST. CROIX					
04/15 - 12/14	98		83		08/01/2003
12/15 - 04/14	135		87		08/01/2003
ST. JOHN					
04/15 - 12/14	110		91		08/01/2003
12/15 - 04/14	185		98		08/01/2003
ST. THOMAS					
04/15 - 12/14	163		95		08/01/2003
12/15 - 04/14	220		99		08/01/2003
WAKE ISLAND					
WAKE ISLAND	60		32		09/01/1998

Dated: June 14, 2005.

Jeannette Owings-Ballard,

*OSD Federal Register Liaison Officer,
Department of Defense.*

[FR Doc. 05-12081 Filed 6-17-05; 8:45 am]

BILLING CODE 5001-06-C

DEPARTMENT OF DEFENSE

Department of the Army

Proposed Collection; Comment Request

AGENCY: Office of the Administrative Assistant to the Secretary of the Army, (OAA-RPA), DoD.

ACTION: Notice.

In compliance with Section 3506(c)(2)(A) of the Paperwork Reduction Act of 1995, the Department of the Army announces a proposed public information collection and seeks public comment on the provisions thereof. Comments are invited on: (a) Whether the proposed collection of information is necessary for the proper performance of the functions of the agency, including whether the information shall have practical utility; (b) the accuracy of the agency's estimate of the burden of the proposed information collection; (c) ways to enhance the quality, utility, and clarity of the information to be collected; and (d) ways to minimize the burden of the information collection on respondents, including through the use of automated collection techniques or other forms of information technology.

DATES: Consideration will be given to all comments received by August 19, 2005.

ADDRESSES: Written comments and recommendations on the proposed information collection should be sent to USACE, Directorate of Civil Works, Institute for Water Resources, 7701 Telegraph Road/Casey Building, Alexandria, Virginia 22315-3868. ATTN: (Virginia R. Pankow). Consideration will be given to all comments received within 60 days of the date of publication of this notice.

FOR FURTHER INFORMATION CONTACT: To request more information on this proposed information collection or to obtain a copy of the proposal and associated collection instruments, please write to the above address, or call Department of the Army Reports Clearance Officer at (703) 602-0636.

Title, Associated Form, and OMB Number: Terminal and transfer Facilities Description; IWR FORMS 1,2,3,4,5,6,7,8, and 9; OMB Control Number 0710-0007.

Needs and Uses: Data gathered and published as one of the 56 Port Series Reports, relating to terminals, transfer facilities, storage facilities, and intermodal transportation. This information is used in navigation, planning, safety, National Security, emergency operations, and general interest studies and activities. Respondents are terminal and transfer facility operators. These data are essential to the Waterborne Commerce Statistics Center in exercising their enforcement and quality control responsibilities in the collection of data from vessel reporting companies.

Affected Public: Business or other for-profit, state, local or tribal government.

Annual Burden Hours: 372.

Number of Respondents: 1,489.

Responses Per Respondent: 1.

Average Burden Per Response: 15 minutes.

Frequency: Annually.

SUPPLEMENTARY INFORMATION:

Summary of Information Collection

The data is used by the Corps of Engineers, in conjunction with other navigation information of waterway freight and passenger traffic, to evaluate the impact of redefining "the justified level of service" of the channel maintenance program. These data are also essential to the Waterborne Commerce Statistic Center in exercising their enforcement and quality control responsibilities in the collection of data from vessel reporting companies.

Dated: June 10, 2005.

Patricia L. Toppings,

Alternate OSD Federal Register Liaison Officer, Department of Defense.

[FR Doc. 05-12065 Filed 6-17-05; 8:45 am]

BILLING CODE 5001-06-M

DEPARTMENT OF DEFENSE

Department of the Army

Proposed Collection; Comment request

AGENCY: Office of the Administrative Assistant to the Secretary of the Army, (OAA-RPA), DoD.

ACTION: Notice.

In compliance with Section 3506(c)(2)(A) of the Paperwork Reduction Act of 1995, the Department of the Army announces a proposed public information collection and seeks public comment on the provisions thereof. Comments are invited on: (a) Whether the proposed collection of information is necessary for the proper performance of the functions of the

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Consideration will be given to all comments received within 60 days of the date of publication of this notice.

FOR FURTHER INFORMATION CONTACT: To request more information on this proposed information collection or to obtain a copy of the proposal and associated collection instruments, please write to the above address, or call Department of the Army Reports Clearance Officer at (703) 602-0636.

Title, Associated Form, and OMB Number: Lock Performance Monitoring System (LMPS); Waterway Traffic Report; ENG FORMS 302c1 and 3102D; OMB Control Number 0710-0008.

Needs and Uses: The U.S. Army Corps of Engineers utilizes the data collected to monitor and analyze the use and operation of federally owned and operated locks; owners, agents and masters of vessels and estimated tonnage and commodities carried. The information is used for sizing and scheduling replacement or maintenance of locks and canals.

Affected Public: Business or other for-profit.

Annual Burden Hours: 28,507.

Number of Respondents: 3,000.

Responses Per Respondent: 231.

Average Burden Per Response: 2.5 minutes.

Frequency: On occasion.

SUPPLEMENTARY INFORMATION:

Summary of Information Collection

The data is used primarily by the Corps of Engineers in conducting a system wide approach to planning and management on the waterway. The Headquarters, Division and District Offices use the information specifically to assist in making determinations on: Adequate staffing for operations and maintenance of the navigation locks and

dams; to justify the hours of locks operations; to provide a basis to justify the continued funding as set out in the President's Operation and Maintenance, General Budget; to schedule route maintenance and repairs; to serve as a basis for studies and plans for improvement; for lock operating procedures; to provide data to be used in analyses for major modifications or replacements to lock and cam structures; and to forecast the impact the lock delays, downtown, and proposed changes have on the diversion of waterborne commerce to other transportation modes.

Dated: June 10, 2005.

Patricia L. Toppings,

Alternate OSD Federal Register Liaison Officer, Department of Defense.

[FR Doc. 05-12066 Filed 6-17-05; 8:45 am]

BILLING CODE 5001-06-M

DEPARTMENT OF DEFENSE

Department of the Army

Proposed Collection; Comment Request

AGENCY: Office of the Administrative Assistant to the Secretary of the Army, (OAA-RPA), DoD

ACTION: Notice.

In compliance with Section 3506(c)(2)(A) of the Paperwork Reduction Act of 1995, the Department of the Army announces a proposed public information collection and seeks public comment on the provisions thereof. Comments are invited on: (a) Whether the proposed collection of information is necessary for the proper performance of the functions of the agency, including whether the information shall have practical utility; (b) the accuracy of the agency's estimate of the burden of the proposed information collection; (c) ways to enhance the quality, utility, and clarity of the information to be collected; and (d) ways to minimize the burden of the information collection on respondents, including through the use of automated collection techniques or other forms of information technology.

DATES: Consideration will be given to all comments received by August 19, 2005

ADDRESSES: Written comments and recommendations on the proposed information collection should be sent to U.S. Army Corps of Engineers, Directorate of Civil Works, 441 G Street, NW., Washington, DC. 20314-1000 ATTN: (Charles Stark). Consideration will be given to all comments received

within 60 days of the date of publication of this notice.

FOR FURTHER INFORMATION CONTACT: To request more information on this proposed information collection or to obtain a copy of the proposal and associated collection instruments, please write to the above address, or call Department of the Army Reports Clearance Officer at (703) 602-0636.

Title, Associated Form, and OMB Number: Customer Service Survey—Regulatory Program US Army Corps of Engineers; ENG FORM 5065; OMB Control Number 0710-0012.

Needs and Uses: The survey of applicants who are required to obtain permits from the U.S. Army Corps of Engineers to build on or conduct dredge and fill operations in United States waters. Opinions on the quality of service are used to make program improvements.

Affected Publics: Business or other for-profit.

Annual Burden Hours: 15,000.

Number of Respondents: 60,000.

Responses Per Respondent: 1.

Average Burden Per Response: 15 minutes.

Frequency: On occasion.

SUPPLEMENTARY INFORMATION: The Corps will conduct surveys of customers at our districts, division and headquarters offices, currently a total of 49 offices. Most customer responses will be solicited by the 38 districts. These elements will tabulate their survey results and send copies to headquarters for a Corps wide tabulation. The survey form will be provided to the public when they receive a regulatory product, primarily a permit decision or wetland determination.

Dated: June 10, 2005.

Patricia L. Toppings

Alternate OSD Federal Register Liaison Officer, Department of Defense.

[FR Doc. 05-12067 Filed 6-17-05; 8:45 am]

BILLING CODE 5001-06-M

DEPARTMENT OF DEFENSE

Department of the Army

Proposed Collection; Comment Request

AGENCY: Office of the Administrative Assistant to the Secretary of the Army, (OAA-RPA), DoD.

ACTION: Notice.

In compliance with Section 3506(c)(2)(A) of the Paperwork Reduction of 1995, the Department of the Army announces a proposed public information collection and seeks public

comment on the provisions thereof. Comments are invited on: (a) Whether the proposed collection of information is necessary for the proper performance of the functions of the agency, including whether the information shall have practical utility; (b) the accuracy of the agency's estimate of the burden of the proposed information collection; (c) ways to enhance the quality, utility, and clarity of the information to be collected; and (d) ways to minimize the burden of the information collection on respondents, including through the use of automated collection techniques or other forms of information technology.

DATES: Consideration will be given to all comments received by August 19, 2005.

ADDRESSES: Written comments and recommendations on the proposed information collection should be sent to Department of the Army, Corps of Engineers, Institute for Water Resources, 7701 Telegraph Road, (CEIWR-MD), Alexandria, Virginia 22315-3868. ATTN: (Stuart A. Davis). Consideration will be given to all comments received within 60 days of the date of publication of this notice.

FOR FURTHER INFORMATION CONTACT: To request more information on this proposed information collection or to obtain a copy of the proposal and associated collection instruments, please write to the above address, or call Department of the Army Reports Clearance Officer at (703) 602-0636.

Title and OMB Number: Corps of Engineers Civil Works Questionnaire—Generic Clearance; OMB Control Number 0710-0001.

Needs and Uses: The U.S. Army Corps of Engineer utilizes the data collected from the questionnaire items for planning data to formulate and evaluate alternative water resources development plans, to determine the effectiveness and evaluate the impacts of Corps projects, and in the case of the flood damage mitigation, to obtain information on flood damage incurred, whether or not a project is being considered or exists. All survey questionnaires are administered either by face-to-face, mail, or telephone methods. Public surveys are used to gather data for planning and operating Corps projects and facilities and to determine public preferences and satisfaction.

Affected Public: Individuals or households; business or other for-profit; not-for-profit institutions; farms; State, local or tribal government.

Annual Burden Hours: 17,750.

Number of Respondents: 214,150.

Responses Per Respondent: 1.

Average Burden Per Response: 5 minutes.

Frequency: On occasion.

SUPPLEMENTARY INFORMATION: All survey questionnaires are carefully selected to minimize undue burden on the public and are subject to internal controls and pre-testing before actual use.

Duplication is avoided by close coordination with state and local agencies as well as other Federal agencies and, whenever possible, participation in joint data collection efforts. Most of the Corps of Engineers civil works survey information is collected for very unique circumstances, such as visitor information at Corps recreation areas or flood damage information related to the Corps evaluation procedures. Much of this information is required to be very current and must be updated every one to two years.

Dated: June 10, 2005.

Patricia L. Toppings,

Alternate OSD Federal Register Liaison Officer, Department of Defense.

[FR Doc. 05-12068 Filed 6-17-05; 8:45 am]

BILLING CODE 5001-06-M

DEPARTMENT OF DEFENSE

Department of the Navy

Notice of Proposed Information Collection; Comment Request

AGENCY: Department of the Navy, DoD.

ACTION: Notice of proposed information collection.

SUMMARY: The Navy Recruiting Command announces a proposed extension of an approved public information collection and seeks public comment on the provisions thereof. Comments are invited on: (a) Whether the proposed collection of information is necessary for the proper performance of the functions of the agency, including whether the information shall have practical utility; (b) the accuracy of the agency's estimate of the burden of the proposed information collection; (c) ways to enhance the quality, utility, and clarity of the information to be collected; and (d) ways to minimize the burden of the information collection on respondents, including through the use of automated collection techniques or other forms of information technology.

DATES: Consideration will be given to all comments received by August 19, 2005.

ADDRESSES: Send written comments and recommendations on the proposed information collection to Commander, Navy Recruiting Command (N35B),

5722 Integrity Drive, Millington, TN 38054-5057.

FOR FURTHER INFORMATION CONTACT: To request additional information or to obtain a copy of the proposal and associated collection instruments, contact Mr. Robert Phillips at (901) 874-9048.

Title, Form Number, and OMB Number: Enlistee Financial Statement: NAVCRUIT Form 1130/13; OMB Control Number 0703-0020.

Needs and Uses: All persons interested in entering the U.S. Navy or U.S. Navy Reserve, who have someone either fully or partially dependent on them for financial support, must provide information on their current financial situation which will determine if the individual will be able to meet their financial obligations on Navy pay. The information is provided on NAVCRUIT Form 1130/13 by the prospective enlistee during an interview with a Navy recruiter.

Affected Public: Individuals or households.

Annual Burden Hours: 47,630.

Number of Respondents: 86,600.

Responses per Respondent: 1.

Average Burden per Response: 33 minutes.

Frequency: On occasion.

SUPPLEMENTARY INFORMATION:

Summary of Information Collection

The information provided on the NAVCRUIT Form 1130/13 is used by the Navy recruiter and by recruiting management personnel in assessing the Navy applicant's ability to meet financial obligations, thereby preventing the enlistment of, and subsequent management difficulties with people who cannot reasonably expect to meet their financial obligations on Navy day.

Dated: June 14, 2005.

Patricia L. Toppings,

Alternate OSD Federal Register Liaison Officer, Department of Defense.

[FR Doc. 05-12064 Filed 6-17-05; 8:45 am]

BILLING CODE 5001-06-M

DEPARTMENT OF EDUCATION

Office of Elementary and Secondary Education, Department of Education; Comprehensive Centers; Notice Inviting Applications for New Awards for Fiscal Year (FY) 2005; Correction

SUMMARY: On June 3, 2005, the Department published in the **Federal Register** (70 FR 32583) a notice inviting applications for new awards for FY 2005 to establish and operate Comprehensive Centers under Title II of the Educational

Technical Assistance Act of 2002 (TA Act).

On page 32589, third column, the additional requirement under the heading "6. *Advisory Board*" is corrected to read as follows:

6. *Advisory Board.* Each application must propose, as part of its technical assistance plan, establishing an advisory board to advise the proposed comprehensive center on: (a) The activities of the center relating to its allocation of resources to and within each State in a manner that reflects the need for assistance in accordance with section 203(d) of Title II of the TA Act; (b) strategies for monitoring and addressing the educational needs of the region, on an ongoing basis; (c) maintaining a high standard of quality in the performance of the center's activities; and (d) carrying out the center's duties in a manner that promotes progress toward improving student academic achievement.

The plan must (1) detail the composition of the board by name and affiliation in accordance with the requirements described in section 203 of the TA Act and in the application instructions found in the application package, and (2) include a letter of commitment from each proposed board member. In the alternative to submitting a plan that meets the requirements in (1) and (2) in the previous sentence, an applicant may include, in its plan, a statement of commitment that it will comply with section 203(g) of the TA Act as well as a narrative statement of how the board will operate.

FOR FURTHER INFORMATION CONTACT: Enid Simmons, Office of School Support and Technology Programs, Office of Elementary and Secondary Education, 400 Maryland Avenue, SW., room 3E307, Washington, DC 20202-6135. Telephone: (202) 708-9499 or via the Internet: enid.simmons@ed.gov.

If you use a telecommunications device for the deaf (TDD), you may call the Federal Relay Service (FRS) at 1-800-877-8339.

Individuals with disabilities may obtain this document in an alternative format (e.g., Braille, large print, audiotape, or computer diskette) or request to the contact person listed under **FOR FURTHER INFORMATION CONTACT**.

Electronic Access to This Document: You may view this document, as well as all other documents of this Department published in the **Federal Register**, in text or Adobe Portable Document Format (PDF) on the Internet at the following site: <http://www.ed.gov/news/fedregister>.

To use PDF you must have Adobe Acrobat Reader, which is available free at this site. If you have questions about using PDF, call the U.S. Government Printing Office (GPO), toll free, at 1-888-293-6498; or in the Washington, DC, area at (202) 512-1530.

Note: The official version of this document is the document published in the **Federal Register**. Free Internet access to the official edition of the **Federal Register** and the Code of Federal Regulations is available on GPO Access at: <http://www.gpoaccess.gov/nara/index.html>.

Dated: June 14, 2005.

Raymond Simon,

Assistant Secretary for Elementary and Secondary Education.

[FR Doc. 05-12101 Filed 6-17-05; 8:45 am]

BILLING CODE 4000-01-P

DEPARTMENT OF ENERGY

Federal Energy Regulatory Commission

Notice of Application for Amendment of License and Soliciting Comments, Motions To Intervene, and Protests

June 13, 2005.

Take notice that the following application has been filed with the Commission and is available for public inspection:

- a. *Application Type:* Non-Project Use of Project Lands and Waters.
- b. *Project No:* 2221-033.
- c. *Date Filed:* May 2, 2005.
- d. *Applicant:* Empire District Electric Company.
- e. *Name of Project:* Ozark Beach.
- f. *Location:* The project is located on the White River in Taney County, Missouri.
- g. *Filed Pursuant to:* Federal Power Act, 16 U.S.C. 791(a)-825(r).
- h. *Applicant Contact:* Mr. Robert Barchak, Manager of Land Administration, Empire District Electric, 602 Joplin Street, Box 127, Joplin, Missouri 64802, 417/625-6160.
- i. *FERC Contact:* Any questions on this notice should be addressed to Mr. Steven Naugle at 202-502-6061, or e-mail address: steven.naugle@ferc.gov.
- j. *Deadline for filing comments and or motions:* July 5, 2005.
- k. All documents (original and eight copies) should be filed with: Ms. Magalie R. Salas, Secretary, Federal Energy Regulatory Commission, 888 First Street, NE., Washington DC 20426. Please include the project number (P-2221-033) on any comments or motions filed. Comments, protests, and interventions may be filed electronically

via the internet in lieu of paper. See 18 CFR 385.2001(a)(1)(iii) and the instructions on the Commission's Web site at <http://www.ferc.gov> under the (e-Filing) link. The Commission strongly encourages e-filings.

l. *Description of Request:* The applicant requests Commission approval to permit the expansion of Scotty's Trout Dock Marina. The existing marina consists of nine covered boat slips, 10 uncovered slips, a fishing supply store, and a boat-fueling station. After the proposed expansion, the marina would contain a total of 28 covered slips. The marina is located at Mile Marker 14 on Lake Taneycomo.

m. *Location of the Application:* This filing is available for review at the Commission in the Public Reference Room 888 First Street, NE., Room 2A, Washington, DC 20426 or may be viewed on the Commission's Web site at <http://www.ferc.gov> using the "e-Library" link. Enter the docket number excluding the last three digits in the docket number field to access the document. For assistance, call toll-free 1-866-208-3676 or e-mail FERCOnlineSupport@ferc.gov. For TTY, call (202) 502-8659. A copy is also available for inspection and reproduction at the address in item h above.

n. Individuals desiring to be included on the Commission's mailing list should so indicate by writing to the Secretary of the Commission.

o. *Comments, Protests, or Motions to Intervene:* Anyone may submit comments, a protest, or a motion to intervene in accordance with the requirements of Rules of Practice and Procedure, 18 CFR 385.210, 385.211, 385.214. In determining the appropriate action to take, the Commission will consider all protests or other comments filed, but only those who file a motion to intervene in accordance with the Commission's Rules may become a party to the proceeding. Any comments, protests, or motions to intervene must be received on or before the specified comment date for the particular application.

p. *Filing and Service of Responsive Documents:* Any filings must bear in all capital letters the title "COMMENTS", "RECOMMENDATIONS FOR TERMS AND CONDITIONS", "PROTEST", OR "MOTION TO INTERVENE", as applicable, and the Project Number of the particular application to which the filing refers. A copy of any motion to intervene must also be served upon each representative of the Applicant specified in the particular application.

q. *Agency Comments:* Federal, state, and local agencies are invited to file

comments on the described application. A copy of the application may be obtained by agencies directly from the Applicant. If an agency does not file comments within the time specified for filing comments, it will be presumed to have no comments. One copy of an agency's comments must also be sent to the Applicant's representatives.

Magalie R. Salas,

Secretary.

[FR Doc. E5-3146 Filed 6-17-05; 8:45 am]

BILLING CODE 6717-01-P

DEPARTMENT OF ENERGY

Federal Energy Regulatory Commission

[Project No. 2183]

Grand River Dam Authority; Notice of Authorization for Continued Project Operation

June 13, 2005.

On June 2, 2003, the Grand River Dam Authority, licensee for the Markham Ferry Project No. 2183, filed an application for a new or subsequent license pursuant to the Federal Power Act (FPA) and the Commission's regulations. Project No. 2183 is located on the Grand River in Mayes County, Oklahoma.

The license for Project No. 2183 was issued for a period ending May 31, 2005. Section 15(a)(1) of the FPA, 16 U.S.C. 808(a)(1), requires the Commission, at the expiration of a license term, to issue from year to year an annual license to the then licensee under the terms and conditions of the prior license until a new license is issued, or the project is otherwise disposed of as provided in section 15 or any other applicable section of the FPA. If the project's prior license waived the applicability of section 15 of the FPA, then, based on Section 9(b) of the Administrative Procedure Act, 5 U.S.C. 558(c), and as set forth at 18 CFR 16.21(a), if the licensee of such project has filed an application for a subsequent license, the licensee may continue to operate the project in accordance with the terms and conditions of the license after the minor or minor part license expires, until the Commission acts on its application. If the licensee of such a project has not filed an application for a subsequent license, then it may be required, pursuant to 18 CFR 16.21(b), to continue project operations until the Commission issues someone else a license for the project or otherwise orders disposition of the project.

If the project is subject to section 15 of the FPA, notice is hereby given that an annual license for Project No. 2183 is issued to the Grand River Dam Authority for a period effective June 1, 2005 through May 31, 2006, or until the issuance of a new license for the project or other disposition under the FPA, whichever comes first. If issuance of a new license (or other disposition) does not take place on or before June 1, 2006, notice is hereby given that, pursuant to 18 CFR 16.18(c), an annual license under section 15(a)(1) of the FPA is renewed automatically without further order or notice by the Commission, unless the Commission orders otherwise.

If the project is not subject to section 15 of the FPA, notice is hereby given that the Grand River Dam Authority is authorized to continue operation of the Markham Ferry Project No. 2183 until such time as the Commission acts on its application for subsequent license.

Magalie R. Salas,
Secretary.

[FR Doc. E5-3145 Filed 6-17-05; 8:45 am]

BILLING CODE 6717-01-P

DEPARTMENT OF ENERGY

Federal Energy Regulatory Commission

[Project No. 6514]

City of Marshall, Michigan; Notice of Authorization for Continued Project Operation

June 13, 2005.

On May 2, 2003, the City of Marshall, Michigan, licensee for the City of Marshall Project No. 6514, filed an application for a new or subsequent license pursuant to the Federal Power Act (FPA) and the Commission's regulations. Project No. 6514 is located on the Kalamazoo River in Calhoun County, Michigan.

The license for Project No. 6514 was issued for a period ending May 31, 2005. Section 15(a)(1) of the FPA, 16 U.S.C. 808(a)(1), requires the Commission, at the expiration of a license term, to issue from year to year an annual license to the then licensee under the terms and conditions of the prior license until a new license is issued, or the project is otherwise disposed of as provided in section 15 or any other applicable section of the FPA. If the project's prior license waived the applicability of section 15 of the FPA, then, based on section 9(b) of the Administrative Procedure Act, 5 U.S.C. 558(c), and as set forth at 18 CFR

16.21(a), if the licensee of such project has filed an application for a subsequent license, the licensee may continue to operate the project in accordance with the terms and conditions of the license after the minor or minor part license expires, until the Commission acts on its application. If the licensee of such a project has not filed an application for a subsequent license, then it may be required, pursuant to 18 CFR 16.21(b), to continue project operations until the Commission issues someone else a license for the project or otherwise orders disposition of the project.

If the project is subject to section 15 of the FPA, notice is hereby given that an annual license for Project No. 6514 is issued to the City of Marshall, Michigan for a period effective June 1, 2005 through May 31, 2006, or until the issuance of a new license for the project or other disposition under the FPA, whichever comes first. If issuance of a new license (or other disposition) does not take place on or before June 1, 2006, notice is hereby given that, pursuant to 18 CFR 16.18(c), an annual license under section 15(a)(1) of the FPA is renewed automatically without further order or notice by the Commission, unless the Commission orders otherwise.

If the project is not subject to section 15 of the FPA, notice is hereby given that the City of Marshall, Michigan is authorized to continue operation of the City of Marshall Project No. 6514 until such time as the Commission acts on its application for subsequent license.

Magalie R. Salas,
Secretary.

[FR Doc. E5-3142 Filed 6-17-05; 8:45 am]

BILLING CODE 6717-01-P

DEPARTMENT OF ENERGY

Federal Energy Regulatory Commission

[Docket No. CP05-366-000]

Questar Pipeline Company and Questar Gas Management Company; Notice of Application

June 13, 2005.

Take notice that Questar Pipeline Company (Questar Pipeline), 180 East 100 South, Salt Lake City, Utah 84111 and Questar Gas Management Company (Questar Gas Management), 1050 17th Street, Suite 500 Denver, Colorado 80265, jointly filed in Docket No. CP05-366-000 on June 3, 2005, an application pursuant to section 7(b) of the Natural Gas Act (NGA), for authorization for Questar Pipeline to abandon, by sale,

16.5-miles of 12-inch diameter pipeline located in Uintah County, Utah, including associated receipt and delivery points and appurtenances to a non-jurisdictional affiliate, Questar Gas Management. Applicants also request a determination under section 1(b) of the NGA that upon abandonment the subject facilities will be non-jurisdictional gathering facilities, all as more fully set forth in the application which is on file with the Commission and open to public inspection. This filing may be also viewed on the Web at <http://www.ferc.gov> using the "eLibrary" link. Enter the docket number excluding the last three digits in the docket number field to access the document. For assistance, call (202) 502-8659 or TTY, (202) 208-3676.

Any questions regarding this application should be directed to Lenard G. Wright, Manager, Federal Regulatory Affairs, Questar Pipeline Company, 180 East 100 South, P.O. Box 45360, Salt Lake City, Utah 84145-0360. Mr. Wright also may be contacted at (801) 324-2459, (801) 324-5834 (fax).

There are two ways to become involved in the Commission's review of this project. First, any person wishing to obtain legal status by becoming a party to the proceedings for this project should, on or before the comment date stated below, file with the Federal Energy Regulatory Commission, 888 First Street, NE., Washington, DC 20426, a motion to intervene in accordance with the requirements of the Commission's Rules of Practice and Procedure (18 CFR 385.214 or 385.211) and the Regulations under the NGA (18 CFR 157.10). A person obtaining party status will be placed on the service list maintained by the Secretary of the Commission and will receive copies of all documents filed by the applicant and by all other parties. A party must submit 14 copies of filings made with the Commission and must mail a copy to the applicant and to every other party in the proceeding. Only parties to the proceeding can ask for court review of Commission orders in the proceeding.

However, a person does not have to intervene in order to have comments considered. The second way to participate is by filing with the Secretary of the Commission, as soon as possible, an original and two copies of comments in support of or in opposition to this project. The Commission will consider these comments in determining the appropriate action to be taken, but the filing of a comment alone will not serve to make the filer a party to the proceeding. The Commission's rules require that persons filing comments in opposition to the project

provide copies of their protests only to the party or parties directly involved in the protest.

Persons who wish to comment only on the environmental review of this project should submit an original and two copies of their comments to the Secretary of the Commission. Environmental commenters will be placed on the Commission's environmental mailing list, will receive copies of the environmental documents, and will be notified of meetings associated with the Commission's environmental review process. Environmental commenters will not be required to serve copies of filed documents on all other parties. However, the non-party commenters will not receive copies of all documents filed by other parties or issued by the Commission (except for the mailing of environmental documents issued by the Commission) and will not have the right to seek court review of the Commission's final order.

Comments, protests and interventions may be filed electronically via the Internet in lieu of paper. See, 18 CFR 385.2001(a)(1)(iii) and the instructions on the Commission's Web site under the "e-Filing" link.

Comment Date: June 23, 2005.

Magalie R. Salas,

Secretary.

[FR Doc. E5-3143 Filed 6-17-05; 8:45 am]

BILLING CODE 6717-01-P

DEPARTMENT OF ENERGY

Federal Energy Regulatory Commission

Combined Notice of Filings #2

June 13, 2005.

Take notice that the Commission received the following electric rate filings:

Docket Numbers: ER05-1021-001.

Applicants: Pacific Gas & Electric Company.

Description: Pacific Gas and Electric Company submits an errata to its May 25, 2005 filing in Docket No. ER05-1021-000 by submitting correct versions of a Generator Special Facilities Agreement and a Generator Interconnection Agreement between PG&E and the City and County of San Francisco PUC.

Filed Date: 06/03/2005.

Accession Number: 20050610-0001.

Comment Date: 5 p.m. Eastern Time on Friday, June 24, 2005.

Docket Numbers: ER05-391-002.

Applicants: Progress Ventures, Inc.

Description: Progress Ventures, Inc.'s submits a refund report in compliance with FERC's 5/23/05 letter order in Docket Nos. ER05-391-000 and 001.

Filed Date: 06/03/2005.

Accession Number: 20050609-0326.

Comment Date: 5 p.m. Eastern Time on Friday, June 24, 2005.

Docket Numbers: ER05-810-001.

Applicants: UGI Energy Services.

Description: UGI Energy Services resubmits its application for market-based rates filed April 12, 2005 with modifications to include the suggested change in status language proposed by FERC and a request for a shortened notice period.

Filed Date: 06/03/2005.

Accession Number: 20050609-0323.

Comment Date: 5 p.m. Eastern Time on Friday, June 17, 2005.

Docket Numbers: ER99-2817-004 and ER01-574-001.

Applicants: UGI Development Company and Hunlock Creek Energy Ventures.

Description: UGI Development Company and Hunlock Creek Energy Ventures submit an errata to UGI Development Company's Triennial Review filed on 4/12/05 and a request for a shortened notice period.

Filed Date: 06/03/2005.

Accession Number: 20050609-0112.

Comment Date: 5 p.m. Eastern Time on Friday, June 17, 2005.

Docket Numbers: ER05-1090-000.

Applicants: Power Choice, Inc.

Description: Power Choice Inc requests cancellation of its market-based tariff and requests waiver of the required 60-day notice period under 18 CFR 35.11 Filed Date: 06/02/2005.

Accession Number: 20050609-0324.

Comment Date: 5 p.m. Eastern Time on Thursday, June 23, 2005.

Any person desiring to intervene or to protest in any of the above proceedings must file in accordance with Rules 211 and 214 of the Commission's Rules of Practice and Procedure (18 CFR 385.211 and 385.214) on or before 5 p.m. Eastern time on the specified comment date. It is not necessary to separately intervene again in a subdocket related to a compliance filing if you have previously intervened in the same docket. Protests will be considered by the Commission in determining the appropriate action to be taken, but will not serve to make protestants parties to the proceeding. Anyone filing a motion to intervene or protest must serve a copy of that document on the Applicant. In reference to filings initiating a new proceeding, interventions or protests submitted on or before the comment deadline need not be served on persons other than the Applicant.

The Commission encourages electronic submission of protests and interventions in lieu of paper, using the FERC Online links at <http://www.ferc.gov>. To facilitate electronic service, persons with Internet access who will eFile a document and/or be listed as a contact for an intervenor must create and validate an eRegistration account using the eRegistration link. Select the eFiling link to log on and submit the intervention or protests.

Persons unable to file electronically should submit an original and 14 copies of the intervention or protest to the Federal Energy Regulatory Commission, 888 First St. NE., Washington, DC 20426.

The filings in the above proceedings are accessible in the Commission's eLibrary system by clicking on the appropriate link in the above list. They are also available for review in the Commission's Public Reference Room in Washington, DC. There is an eSubscription link on the web site that enables subscribers to receive e-mail notification when a document is added to a subscribed docket(s). For assistance with any FERC Online service, please e-mail FERCOnlineSupport@ferc.gov or call (866) 208-3676 (toll free). For TTY, call (202) 502-8659.

Linda Mitry,

Deputy Secretary.

[FR Doc. E5-3181 Filed 6-17-05; 8:45 am]

BILLING CODE 6717-01-P

DEPARTMENT OF ENERGY

Federal Energy Regulatory Commission

Combined Notice of Filings #1

June 14, 2005.

Take notice that the Commission received the following electric rate filings:

Docket Numbers: ER02-237-005;

ER02-2026-004; ER03-922-005.

Applicants: J. Aron & Company; Quachita Power, LLC; Southaven Power, LLC.

Description: J. Aron & Company, Quachita Power, LLC and Southaven Power, LLC submit a notice of non-material change in status, in compliance with the reporting requirements adopted by FERC in Order No. 652 and the conditions adopted in each of the indicated sellers' market-based rate tariffs.

Filed Date: 06/03/2005.

Accession Number: 20050614-0099.

Comment Date: 5 p.m. Eastern Time on Friday, June 24, 2005.

Docket Numbers: ER03-198-004.

Applicants: Pacific Gas & Electric Company.

Description: Pacific Gas & Electric Company submits notification of change in status due to its recent execution of a power purchase contract with an affiliated counterparty.

Filed Date: 06/02/2005.

Accession Number: 20050603-0100.

Comment Date: 5 p.m. Eastern Time on Thursday, June 23, 2005.

Docket Numbers: ER05-1079-000.

Applicants: Forest Investment Group, LLC.

Description: Forest Investment Group, LLC submits petition for acceptance of Initial Rate Schedule, Waivers and Blanket Authority under ER05-1079.

Filed Date: 06/06/2005.

Accession Number: 20050608-0427.

Comment Date: 5 p.m. Eastern Time on Monday, June 27, 2005.

Docket Numbers: ER05-1084-000.

Applicants: Midwest Independent Transmission System Operator, Inc.

Description: Midwest Independent Transmission System Operator, Inc. submits an Interconnection and Operating Agreement with South Ridge Wind Interconnect, LLC and Northern States Power Company dba Xcel Energy under ER05-1084.

Filed Date: 06/07/2005.

Accession Number: 20050609-0102.

Comment Date: 5 p.m. Eastern Time on Tuesday, June 28, 2005.

Docket Numbers: ER05-1085-000.

Applicants: Midwest Independent Transmission System Operator, Inc.

Description: Midwest Independent Transmission System Operator, Inc. submits proposed revisions to Attachment AA (Compensation and Cost Recover for Action during Emergency Condition) and Attachment BB (Compensation for Rescheduling Generator Outages) of the Midwest ISO Open Access and Energy Markets Tariff.

Filed Date: 06/07/2005.

Accession Number: 20050609-0103.

Comment Date: 5 p.m. Eastern Time on Tuesday, June 28, 2005.

Docket Numbers: ER05-1086-000.

Applicants: ISO New England Inc. *Description:* ISO New England, Inc. submits the Coordination Agreement with New Brunswick System Operator, Inc. under ER05-1086.

Filed Date: 06/07/2005.

Accession Number: 20050609-0101.

Comment Date: 5 p.m. Eastern Time on Tuesday, June 28, 2005.

Docket Numbers: ER05-1087-000.

Applicants: Southwest Power Pool.

Description: Southwest Pool Inc submits revisions to its regional Open Access Transmission Tariff to incorporate Aquila Networks—L&P, Aquila Networks—MPS and Aquila Networks—WPK as Transmission Owners in the Southwest Power Pool Tariff.

Filed Date: 06/07/2005.

Accession Number: 20050609-0100.

Comment Date: 5 p.m. Eastern Time on Tuesday, June 28, 2005.

Docket Numbers: ER05-1088-000.

Applicants: MidAmerican Energy Company.

Description: MidAmerican Energy Company submits an Interconnection Agreement with Omaha Public Power District dated 6/6/05 under ER05-1088.

Filed Date: 06/07/2005.

Accession Number: 20050609-0099.

Comment Date: 5 p.m. Eastern Time on Tuesday, June 28, 2005.

Docket Numbers: ER05-1089-000.

Applicants: Wisconsin Public Service Corporation.

Description: Wisconsin Public Service Corporation requests that FERC institute a cooperative joint proceeding with Public Service Commission of Wisconsin to approve the provisions of the Wind-Up Plan concerning the impact of its sale of the Kewaunee Nuclear Power Plant on its rates for service to Public Service Commission of Wisconsin and FERC customers and for approval of the Kewaunee Wind-Up Plan.

Filed Date: 06/07/2005.

Accession Number: 20050609-0327.

Comment Date: 5 p.m. Eastern Time on Tuesday, June 28, 2005.

Docket Numbers: ER05-882-001.

Applicants: Carolina Power & Light Company and Florida Power Corporation.

Description: Carolina Power & Light Company d/b/a Progress Energy Carolinas, Inc and Florida Power Corporation d/b/a Progress Energy Florida, Inc. submits corrections to their April 28, 2005 filing in ER05-882-000.

Filed Date: 06/07/2005.

Accession Number: 20050609-0098.

Comment Date: 5 p.m. Eastern Time on Tuesday, June 28, 2005.

Docket Numbers: ER94-1188-036;

ER98-4540-005; ER99-1623-005;

ER98-1278-011; ER98-1279-007;

EL05-99-000.

Applicants: LG&E Energy Marketing Inc.; Louisville Gas & Electric Company; Kentucky Utilities Company; WKE Station Two Inc.; Western Kentucky Energy Corp.

Description: LG&E Energy Market Inc.; Louisville Gas & Electric Company; Kentucky Utilities Company; and

Western Kentucky Energy Corp. provide their first filing in compliance with FERC's 5/5/05 Order, 111 FERC ¶ 61,153 (2005).

Filed Date: 06/06/2005.

Accession Number: 20050609-0115.

Comment Date: 5 p.m. Eastern Time on Monday, June 27, 2005.

Docket Numbers: ER96-2734-005.

Applicants: Southern Indiana Gas & Electric Company.

Description: Southern Indiana Gas & Electric Co. dba Vectren Energy Delivery of Indiana submits Original Sheet 4A to its FERC Electric Tariff, First Revised Volume 4 in compliance with the Commission's 5/5/2005 order.

Filed Date: 06/06/2005.

Accession Number: 20050609-0096.

Comment Date: 5 p.m. Eastern Time on Monday, June 27, 2005.

Any person desiring to intervene or to protest in any of the above proceedings must file in accordance with Rules 211 and 214 of the Commission's Rules of Practice and Procedure (18 CFR 385.211 and 385.214) on or before 5 p.m. Eastern time on the specified comment date. It is not necessary to separately intervene again in a subdocket related to a compliance filing if you have previously intervened in the same docket. Protests will be considered by the Commission in determining the appropriate action to be taken, but will not serve to make protestants parties to the proceeding. Anyone filing a motion to intervene or protest must serve a copy of that document on the Applicant. In reference to filings initiating a new proceeding, interventions or protests submitted on or before the comment deadline need not be served on persons other and the Applicant.

The Commission encourages electronic submission of protests and interventions in lieu of paper, using the FERC Online links at <http://www.ferc.gov>. To facilitate electronic service, persons with Internet access who will eFile a document and/or be listed as a contact for an intervenor must create and validate an eRegistration account using the eRegistration link. Select the eFiling link to log on and submit the intervention or protests.

Persons unable to file electronically should submit an original and 14 copies of the intervention or protest to the Federal Energy Regulatory Commission, 888 First St. NE., Washington, DC 20426.

The filings in the above proceedings are accessible in the Commission's eLibrary system by clicking on the appropriate link in the above list. They are also available for review in the Commission's Public Reference Room in

Washington, DC. There is an eSubscription link on the web site that enables subscribers to receive email notification when a document is added to a subscribed docket(s). For assistance with any FERC Online service, please email FERCOnlineSupport@ferc.gov, or call (866) 208-3676 (toll free). For TTY, call (202) 502-8659.

Linda Mitry,
Deputy Secretary,
[FR Doc. E5-3182 Filed 6-17-05; 8:45 am]
BILLING CODE 6717-01-P

DEPARTMENT OF ENERGY

Federal Energy Regulatory Commission

[Docket No. ER05-719-001, et al.]

Entergy Services, Inc., et al.; Electric Rate and Corporate Filings

June 13, 2005.

The following filings have been made with the Commission. The filings are listed in ascending order within each docket classification.

1. Entergy Services, Inc.

[Docket No. ER05-719-001]

Take notice that on June 3, 2005, Entergy Services, Inc. (Entergy Services) submitted for filing on behalf of Entergy Arkansas, Inc. (EAI), certain corrected pages to EAI's 2005 Wholesale Formula Rate Update filed on March 23, 2005 in Docket No. ER05-719-000. Entergy Services states that the amended pages correct the distribution rate applicable to the City of North Little Rock, Arkansas.

Comment Date: 5 p.m. Eastern Time on June 24, 2005.

2. James S. Pignatelli

[Docket No. ID-3938-001]

Take notice that on June 8, 2005, James S. Pignatelli tendered for filing an application for authority to hold interlocking positions among ISO New England Inc., Tucson Electric Power Company, and UNS Electric, Inc.

Comment Date: 5 p.m. Eastern Time on June 22, 2005.

3. Orlando Utilities Commission

[Docket No. NJ05-3-000]

Take notice that on June 6, 2005, the Orlando Utilities Commission (OUC) filed revisions to its non-jurisdictional Large Generator Interconnection Procedures and Large Generator Interconnection Agreement to comply with Order No. 2003-B, *Standardization of Generator Interconnection*

Agreements and Procedures. OUC has requested an effective date of June 3, 2005.

Comment Date: 5 p.m. Eastern Time on June 27, 2005.

Standard Paragraph

Any person desiring to intervene or to protest in any of the above proceedings must file in accordance with Rules 211 and 214 of the Commission's Rules of Practice and Procedure (19 CFR 385.211 and 385.214) on or before 5 p.m. Eastern time on the specified comment date. It is not necessary to separately intervene again in a subdocket related to a compliance filing if you have previously intervened in the same docket. Protests will be considered by the Commission in determining the appropriate action to be taken, but will not serve to make protestants parties to the proceeding. Anyone filing a motion to intervene or protest must serve a copy of that document on the Applicant. In reference to filings initiating a new proceeding, interventions or protests submitted on or before the comment deadline need not be served on persons other than the Applicant.

The Commission encourages electronic submission of protests and interventions in lieu of paper, using the FERC Online links at <http://www.ferc.gov>. To facilitate electronic service, persons with Internet access who will eFile a document and/or be listed as a contact for an intervenor must create and validate an eRegistration account using the eRegistration link. Select the eFiling link to log on and submit the intervention or protests.

Persons unable to file electronically should submit an original and 14 copies of the intervention or protests to the Federal Energy Regulatory Commission, 888 First Street, NE., Washington, DC 20426.

The filings in the above proceedings are accessible in the Commission's eLibrary system by clicking on the appropriate link in the above list. They are also available to review in the Commission's Public Reference Room in Washington, DC. There is an eSubscription link on the Web site that enables subscribers to receive e-mail notification when a document is added to a subscribed docket(s). For assistance with any FERC Online service, please e-mail FERCOnlineSupport@ferc.gov or call (866) 208-3676 (toll free). For TTY, call (202) 502-8659.

Linda Mitry,
Deputy Secretary,
[FR Doc. E5-3183 Filed 6-17-05; 8:45 am]
BILLING CODE 6717-01-P

DEPARTMENT OF ENERGY

Federal Energy Regulatory Commission

Combined Notice of Filings #1

June 13, 2005.

Take notice that the Commission received the following electric rate filings:

Docket Numbers: ER00-1147-000; ER05-287-001.

Applicants: Granite Ridge Energy, LLC.

Description: Granite Ridge Energy, LLC submits its amended updated triennial market power analysis.

Filed Date: 06/06/2005.

Accession Number: 20050609-0319.

Comment Date: 5 p.m. Eastern Time on Monday, June 27, 2005.

Docket Numbers: ER04-691-045; EL04-104-043; ER05-1083-000.

Applicants: Midwest Independent Transmission System Operator, Inc.

Description: Midwest Independent Transmission Owners submits attached revisions to Schedule 24 of the Midwest ISO's Open Access Transmission and Energy Markets Tariff pursuant to FERC's 2/18/05 Order and a section 205 filing submitting proposed changes to Schedule No. 1.

Filed Date: 06/06/2005.

Accession Number: 20050609-0105.

Comment Date: 5 p.m. Eastern Time on Monday, June 27, 2005.

Docket Numbers: ER05-1076-000.
Applicants: Carolina Power & Light Company.

Description: Carolina Power & Light Company aka Progress Energy Carolinas, Inc. requests FERC acceptance of the Market-Based Rate Tariff, FERC Electric Tariff Volume 7 under ER05-1076.

Filed Date: 06/06/2005.

Accession Number: 20050608-0120.

Comment Date: 5 p.m. Eastern Time on Monday, June 27, 2005.

Docket Numbers: ER05-1077-000.
Applicants: Florida Power Corporation.

Description: Florida Power Corporation aka Progress Energy Florida, Inc. requests FERC's acceptance of the Market-Based Rate Tariffs, FERC Electric Tariff Volume 8 and Second Revised Volume No. 10 under ER05-1077.

Filed Date: 06/06/2005.

Accession Number: 20050608-0121.

Comment Date: 5 p.m. Eastern Time on Monday, June 27, 2005.

Docket Numbers: ER05-1078-000.
Applicants: San Diego Gas & Electric Company.

Description: San Diego Gas & Electric Company submits Service Agreement 23

to its FERC Electric Tariff, Second Revised Volume 11 under ER05-1078.
Filed Date: 06/06/2005.

Accession Number: 20050608-0124.
Comment Date: 5 p.m. Eastern Time on Monday, June 27, 2005.

Docket Numbers: ER05-1080-000.
Applicants: WKE Station Two, Inc.
Description: WKE Station Two, Inc. submits a notice of cancellation of certain tariff sheets erroneously submitted on 11/19/04.

Filed Date: 06/06/2005.
Accession Number: 20050608-0428.
Comment Date: 5 p.m. Eastern Time on Monday, June 27, 2005.

Docket Numbers: ER05-1082-000.
Applicants: Carolina Power & Light Company.

Description: Carolina Power & Light Company aka Progress Energy Carolina, Inc. requests that FERC accept the Cost-Based Wholesale Power Sales Tariff, designated as FERC Electric Tariff, Original Volume 6, submitted pursuant to section 205 of the Federal Power Act under ER05-1082.

Filed Date: 06/06/2005.
Accession Number: 20050608-0425.
Comment Date: 5 p.m. Eastern Time on Monday, June 27, 2005.

Docket Numbers: ER05-319-003.
Applicants: PJM Interconnection, L.L.C.

Description: PJM Interconnection, L.L.C. submits a substitute interconnection service agreement with MM Hackensack Energy, LLC, and Public Service Electric and Gas Company pursuant to FERC's 5/6/05 Order.

Filed Date: 06/06/2005.
Accession Number: 20050608-0123.
Comment Date: 5 p.m. Eastern Time on Monday, June 27, 2005.

Docket Numbers: ER05-767-003.
Applicants: New England Power Pool Participants Committee and ISO New England Inc.

Description: New England Power Pool Participants Committee and ISO New England Inc. submit a report of compliance and revised Market Rule 1, Appendix A tariff sheets reflecting the effective date accepted in FERC's 5/6/05 order.

Filed Date: 06/06/2005.
Accession Number: 20050609-0107.
Comment Date: 5 p.m. Eastern Time on Monday, June 27, 2005.

Docket Numbers: ER05-815-001.
Applicants: PJM Interconnection, LLC.

Description: PJM Interconnection, LLC submits a substitute executed interconnection service agreement with PSEG Nuclear LLC and Public Service Electric and Gas Company and Atlantic City Electric Company.

Filed Date: 06/06/2005.

Accession Number: 20050608-0122.
Comment Date: 5 p.m. Eastern Time on Monday, June 27, 2005.

Docket Numbers: ER05-923-001.

Applicants: Wisconsin Electric Power Company.

Description: Wisconsin Electric Power Co. submits an amendment to its 4/29/05 submission of certain revisions to its Rate Schedule FERC No. 102, a Wholesale Distribution Export Service Agreement with Alliant Energy Corporate Services, Inc.

Filed Date: 06/06/2005.
Accession Number: 20050609-0113.
Comment Date: 5 p.m. Eastern Time on Monday, June 27, 2005.

Docket Numbers: ER97-2846-005; ER99-2311-006; EL05-77-000.

Applicants: Florida Power Corporation.

Description: Progress Energy Inc. on behalf of Carolina Power & Light Company, also known as Progress Energy Carolinas, Inc.; and Florida Power Corporation, also known as Progress Energy Florida, Inc. submits an updated market power analysis for Carolina Power & Light Company and Florida Power Corporation pursuant to the 5/5/05 order issued by FERC.

Filed Date: 06/06/2005.
Accession Number: 20050610-0005.
Comment Date: 5 p.m. Eastern Time on Monday, June 27, 2005.

Docket Numbers: ER97-324-009; ER97-3834-015; ER98-3026-010; ER00-1816-005; ER00-1746-004; ER02-963-006.

Applicants: The Detroit Edison Company; DTE Energy Trading, Inc.; DTE Edison America, Inc.; DTE River Rouge No. 1, L.L.C.; DTE Georgetown, L.P.; Crete Energy Venture, L.L.C.

Description: The Detroit Edison Company, DTE Energy Trading, Inc.; DTE Edison America, Inc.; DTE Georgetown, L.P., DTE River Rouge No. 1, L.L.C.; and Crete Energy Venture, L.L.C. submit amended sheets to their respective market-based rate tariffs in compliance with FERC's 5/5/05 Order.

Filed Date: 06/06/2005.
Accession Number: 20050613-0010.
Comment Date: 5 p.m. Eastern Time on Monday, June 27, 2005.

Docket Numbers: ER99-2251-004; ER99-2252-005; ER98-2491-010; ER97-705-015; ER02-2080-004; ER02-2546-005; ER99-3248-007; ER99-1213-005 and ER01-1526-005.

Applicants: Consolidated Edison Company of New York, Inc.; Orange and Rockland Utilities, Inc.; Consolidated Edison Energy, Inc.; Consolidated Edison Solutions, Inc.; Ocean Peaking Power, L.L.C.; CED Rock Springs, Inc.;

Consolidated Edison Energy of Massachusetts, Inc.; Lakewood Cogeneration, L.P.; Newington Energy, L.L.C.

Description: The Con Edison Companies listed above submit the revised market power analysis required by the Order Conditionally Accepting Updated Market Power Analysis issued on 5/5/05 (111 FERC 61,155).

Filed Date: 06/06/2005.
Accession Number: 20050610-0002.
Comment Date: 5 p.m. Eastern Time on Monday, June 27, 2005.

Docket Numbers: ER05-1062-000.
Applicants: New England Power Pool.

Description: The New England Power Pool Participants Committee submits the signature pages to the agreement dated as of 9/1/71 as amended and executed in order to expand NEPOOL membership to include Bear Swamp Power Company, LLC; Black Oak Capital, LLC; Gas Recovery Systems, LLC; LaBree's Inc.; Labree's Energy, LLC; Mirant Energy Trading, LLC; New England Wire Technologies; Saracen Energy, LP; and Saracen Merchant Energy, LP.

Filed Date: 06/01/2005.
Accession Number: 20050603-0084.
Comment Date: 5 p.m. Eastern Time on Wednesday, June 22, 2005.

Docket Numbers: ER05-1063-000.
Applicants: Florida Power Corporation.

Description: Florida Power doing business as Progress Energy Florida, Inc. submits a rate schedule providing for cost-based power sales to the City of Winter Park, Florida designated as Rate Schedule FERC 191 to become effective 6/1/05.

Filed Date: 06/01/2005.
Accession Number: 20050603-0085.
Comment Date: 5 p.m. Eastern Time on Wednesday, June 22, 2005.

Any person desiring to intervene or to protest in any of the above proceedings must file in accordance with Rules 211 and 214 of the Commission's Rules of Practice and Procedure (18 CFR 385.211 and 385.214) on or before 5 p.m. Eastern time on the specified comment date. It is not necessary to separately intervene again in a subdocket related to a compliance filing if you have previously intervened in the same docket. Protests will be considered by the Commission in determining the appropriate action to be taken, but will not serve to make protestants parties to the proceeding. Anyone filing a motion to intervene or protest must serve a copy of that document on the Applicant. In reference to filings initiating a new proceeding, interventions or protests submitted on or before the comment deadline need

not be served on persons other than the Applicant.

The Commission encourages electronic submission of protests and interventions in lieu of paper, using the FERC Online links at <http://www.ferc.gov>. To facilitate electronic service, persons with Internet access who will eFile a document and/or be listed as a contact for an intervenor must create and validate an eRegistration account using the eRegistration link. Select the eFiling link to log on and submit the intervention or protests.

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Linda Mitry,

Deputy Secretary.

[FR Doc. E5-3208 Filed 6-17-05; 8:45 am]

BILLING CODE 6717-01-P

DEPARTMENT OF ENERGY

Federal Energy Regulatory Commission

[Docket No. CP03-75-002]

Freeport LNG Development, L.P.; Notice of Intent To Prepare An Environmental Assessment for the Proposed Freeport LNG Development, L.P.'s Amended Freeport LNG (Pipeline) Project and Request for Comments on Environmental Issues

June 13, 2005.

The staff of the Federal Energy Regulatory Commission (FERC or Commission) will prepare an environmental assessment (EA) that will discuss the environmental impacts of Freeport LNG Development, L.P.'s (Freeport LNG) proposal to amend its authorization for its Freeport LNG Project. Freeport LNG proposes to change the diameter of its previously approved pipeline from 36 inches to 42

inches. The larger pipeline would use the same right-of-way and workspaces as the previously approved route from Quintana Island to Stratton Ridge in Brazoria County, Texas. Freeport LNG is not requesting any additional work areas for the construction of the larger pipeline.

This notice announces the opening of the scoping period that will be used to gather environmental input from the public and interested agencies on the project. Please note that the scoping period will close on July 13, 2005.

This notice is being sent to potentially affected landowners; federal, state, and local government agencies; elected officials; environmental and public interest groups; Native American Tribes, other interested parties; local libraries and newspapers. State and local government representatives are asked to notify their constituents of this planned project and encourage them to comment on their areas of concern.

A fact sheet prepared by the FERC entitled "An Interstate Natural Gas Facility On My Land? What Do I Need To Know?" is available for viewing on the FERC website (<http://www.ferc.gov>). This fact sheet addresses a number of typically asked questions, including how to participate in the Commission's proceedings. It is available for viewing on the FERC Internet Web site (<http://www.ferc.gov>).

Background

In the Commission's June 18, 2004 Order, Freeport LNG was authorized to construct and operate a 9.6 mile, 36-inch-diameter pipeline and a liquefied natural gas (LNG) terminal. At this time the authorized LNG terminal is under construction. Pipeline construction is planned to start in December 2005.

Freeport LNG filed its original application on March 28, 2003. At that time Freeport LNG did not foresee a potential for additional customer demand. Since the project was authorized by the Commission other customers have expressed interest in using the LNG facility to import natural gas. Freeport proposes to meet this increased demand by expanding its authorized facilities. The proposal under consideration in this docket is only Freeport LNG's proposal to increase the diameter of its outlet pipeline from 36 inches to 42 inches.¹

We are looking at the increased pipeline diameter separately from the proposed expansion of the LNG

terminal for several reasons. First, since the larger pipeline would be constructed in the same footprint as the previously authorized pipeline it appears that there would be no additional environmental impact from that described in the environmental impact statement (EIS) prepared for the original Freeport LNG Project. Second, although the increase in diameter would benefit future expansion, it would also benefit the already authorized terminal. The increase in diameter would provide Freeport LNG with more operational flexibility by maintaining higher delivery pressures at the Stratton Ridge delivery point at the terminus of the line. Staff estimates that the increase in pipe diameter would increase delivery pressures at the Stratton Ridge delivery point by as much as 13 percent. Higher delivery pressures at the Stratton Ridge delivery would enable Freeport LNG to respond to larger hourly swings in demand on its pipeline system. Finally, there is a timing issue. In order to meet the in-service date for the authorized project, construction of the pipeline must start in December 2005. If the authorized 36-inch-diameter pipeline is installed and the Commission decides to approve the expansion of the terminal a second pipeline would need to be installed to meet the volume requirements of the expansion. This would result in increased environmental impact. If the Commission decides not to approve the expansion the 42-inch-diameter pipeline would continue to be used for the existing customers.

The location of the project facilities is shown in Appendix 1.²

Land Requirements for Construction

Construction of the 42-inch-diameter pipeline would disturb the same 87.9 acres of land that would have been disturbed by the previously approved 36-inch-diameter pipeline. Following construction, about 37.3 acres would be maintained as permanent right-of-way. The remaining 50.6 acres of land would be restored and allowed to revert to its former use.

² The appendices referenced in this notice are not being printed in the **Federal Register**. Copies of all appendices, other than appendix 1 (maps), are available on the Commission's Web site at the "eLibrary" link or from the Commission's Public Reference Room, 888 First Street, NE., Washington, DC 20426, or call (202) 502-8371. For instructions on connecting to eLibrary refer to the last page of this notice. Copies of the appendices were sent to all those receiving this notice in the mail.

¹ Freeport LNG has also filed an application to expand the LNG terminal in Docket No. CP05-361-000. This application will be the focus of a separate environment review and an NOI for this project will be issued in the near future.

The EA Process

We³ are preparing this EA to comply with the National Environmental Policy Act (NEPA) which requires the Commission to take into account the environmental impacts that could result from an action whenever it considers the issuance of a Certificate of Public Convenience and Necessity. NEPA also requires us to discover and address concerns the public may have about proposals. This process is referred to as "scoping". The main goal of the scoping process is to focus the analysis in the EA on the important environmental issues. By this Notice of Intent, the Commission staff requests public comments on the scope of the issues to address in the EA. All comments received are considered during the preparation of the EA. By this notice, we are also asking federal, state, and local agencies with jurisdiction and/or special expertise with respect to environmental issues to formally cooperate with us in the preparation of the EA. Agencies that would like to request cooperating status should follow the instructions for filing comments below.

Our independent analysis of the issues will be in the EA. Depending on the comments received during the scoping process, the EA may be published and mailed to federal, state, and local agencies, public interest groups, interested individuals, affected landowners, newspapers, libraries, and the Commission's official service list for this proceeding. A comment period will be allotted for review if the EA is published. We will consider all comments on the EA before we make our recommendations to the Commission.

Currently Identified Environmental Issues

Since the proposed increase in pipeline diameter would not result in any environmental impacts that were not described in the Freeport LNG Environmental Impact Statement, in the EA, we will summarize the impacts that could occur as a result of the construction and operation of the project. We will also evaluate possible alternatives to increasing the diameter of the pipeline.

Public Participation

You can make a difference by providing us with your specific comments or concerns about the project. By becoming a commentator, your

concerns will be addressed in the EA and considered by the Commission. You should focus on the potential environmental effects of the proposal, alternatives to the proposal (including alternative locations and routes), and measures to avoid or lessen environmental impact. The more specific your comments, the more useful they will be. Please carefully follow these instructions to ensure that your comments are received in time and properly recorded:

- Send an original and two copies of your letter to: Magalie R. Salas, Secretary, Federal Energy Regulatory Commission, 888 First St., NE., Room 1A, Washington, DC 20426.
- Label one copy of the comments for the attention of Gas Branch 2.
- Reference Docket Number CP03-75-002.
- Mail your comments so that they will be received in Washington, DC on or before July 13, 2005.

Please note that the Commission strongly encourages electronic filing of any comments or interventions or protests to this proceeding. See 18 CFR 385.2001(a)(1)(iii) and the instructions on the Commission's Web site at <http://www.ferc.gov> under the "e-Filing" link and the link to the User's Guide. Before you can file comments, you will need to create an account which can be created on-line.

Becoming an Intervenor

In addition to involvement in the EA scoping process, you may want to become an official party to the proceeding known as an "intervenor". Intervenor play a more formal role in the process. Among other things, intervenors have the right to receive copies of case-related Commission documents and filings by other intervenors. Likewise, each intervenor must send one electronic copy (using the Commission's eFiling system) or 14 paper copies of its filings to the Secretary of the Commission and must send a copy of its filings to all other parties on the Commission's service list for this proceeding. If you want to become an intervenor you must file a motion to intervene according to Rule 214 of the Commission's Rules of Practice and Procedure (18 CFR 385.214, see Appendix 2).⁴ Only intervenors have the right to seek rehearing of the Commission's decision.

Affected landowners and parties with environmental concerns may be granted intervenor status upon showing good

cause by stating that they have a clear and direct interest in this proceeding which would not be adequately represented by any other parties. You do not need intervenor status to have your environmental comments considered.

Environmental Mailing List

If you wish to remain on our environmental mailing list, please return the Information Request Form included in Appendix 2. If you do not return this form, you will be removed from our mailing list.

Additional Information

Additional information about the project is available from the Commission's Office of External Affairs, at 1-866-208-FERC or on the FERC Internet website (www.ferc.gov) using the eLibrary link. Click on the eLibrary link, click on "General Search" and enter the docket number excluding the last three digits in the Docket Number field. Be sure you have selected an appropriate date range. For assistance, please contact FERC Online Support at FERCOnlineSupport@ferc.gov or toll free at 1-866-208-3676, or for TTY, contact (202) 502-8659. The eLibrary link also provides access to the texts of formal documents issued by the Commission, such as orders, notices, and rulemakings.

In addition, the Commission now offers a free service called eSubscription which allows you to keep track of all formal issuances and submittals in specific dockets. This can reduce the amount of time you spend researching proceedings by automatically providing you with notification of these filings, document summaries and direct links to the documents. Go to www.ferc.gov/esubscribenow.htm.

Magalie R. Salas,
Secretary.

[FR Doc. E5-3147 Filed 6-17-05; 8:45 am]

BILLING CODE 6717-01-P

DEPARTMENT OF ENERGY

Federal Energy Regulatory Commission

[P-2153-012]

United Water Conservation District; Notice of Application Ready for Environmental Analysis and Soliciting Comments, Recommendations, Terms and Conditions, and Prescriptions

June 13, 2005.

Take notice that the following hydroelectric application has been filed

³ "We", "us", and "our" refer to the environmental staff of the Office of Energy Projects (OEP).

⁴ Interventions may also be filed electronically via the Internet in lieu of paper. See the previous discussion on filing comments electronically.

with the Commission and is available for public inspection.

a. *Type of Application:* New Major License.

b. *Project No.:* 2153–012.

c. *Date filed:* April 30, 2002.

d. *Applicant:* United Water Conservation District.

e. *Name of Project:* Santa Felicia Hydroelectric Project.

f. *Location:* On Piru Creek, in Ventura County, California. There are 174.5 acres of United States Forest Service land (Los Padres and Angels National Forest) within the boundary of the project.

g. *Filed Pursuant to:* Federal Power Act, 16 U.S.C. 791(a)—825(r).

h. *Applicant Contact:* John Dickenson, United Water Conservation District, 106 N. 8th Street, Santa Paula, CA 93060, (805) 525–4431, johnd@unitedwater.org

i. *FERC Contact:* Kenneth Hogan at (202) 502–8434 or Kenneth.Hogan@ferc.gov.

j. Deadline for filing comments, recommendations, terms and conditions, and prescriptions is 60 days from the issuance of this notice; reply comments are due 105 days from the issuance date of this notice.

All documents (original and eight copies) should be filed with: Magalie R. Salas, Secretary, Federal Energy Regulatory Commission, 888 First Street, NE., Washington, DC 20426.

The Commission's Rules of Practice require all intervenors filing documents with the Commission to serve a copy of that document on each person on the official service list for the project. Further, if an intervenor files comments or documents with the Commission relating to the merits of an issue that may affect the responsibilities of a particular resource agency, they must also serve a copy of the document on that resource agency.

Comments, recommendations, terms and conditions, and prescriptions may be filed electronically via the Internet in lieu of paper. The Commission strongly encourages electronic filings. See 18 CFR 385.2001(a)(1)(iii) and the instructions on the Commission's Web site (<http://www.ferc.gov>) under the "e-filing" link.

k. This application has been accepted for filing and is now ready for environmental analysis.

l. The Santa Felicia Project is operated as a flood control dam during the winter with a primary purpose of storing water to recharge alluvium aquifers downstream of the project. Typically, the project acts as a hydroelectric project only during the conservation releases that serve to recharge the aquifers, normally a period of

approximately 50 days during September and October. Power is also generated in anticipation of or during reservoir spill periods. The existing Santa Felicia Project consists of (1) A 200-foot-tall, 1,260-foot-long earth-fill dam; (2) an 87,187 acre-foot reservoir with a useable storage capacity of 67,669 acre-feet; (3) an ungated spillway and associated works; (4) a powerhouse with two units having a total installed capacity of 1,434-kilowatts; and (5) appurtenant facilities. The Santa Felicia powerhouse is operated manually.

m. A copy of the application is available for review at the Commission in the Public Reference Room or may be viewed on the Commission's Web site at <http://www.ferc.gov> using the "eLibrary" link. Enter the docket number excluding the last three digits in the docket number field to access the document. For assistance, contact FERC Online Support at FERCOnlineSupport@ferc.gov or toll-free at 1–866–208–3676, or for TTY, (202) 502–8659. A copy is also available for inspection and reproduction at the address in item (h) above.

You may also register online at <http://www.ferc.gov/docs-filing/esubscription.asp> to be notified via e-mail of new filings and issuances related to this or other pending projects. For assistance, contact FERC Online Support.

n. Public notice of the filing of the initial development application, which has already been given, established the due date for filing competing applications or notices of intent. Under the Commission's regulations, any competing development application must be filed in response to and in compliance with public notice of the initial development application. No competing applications or notices of intent may be filed in response to this notice.

All filings must (1) Bear in all capital letters the title "COMMENTS", "REPLY COMMENTS", "RECOMMENDATIONS," "TERMS AND CONDITIONS," or "PRESCRIPTIONS;" (2) set forth in the heading the name of the applicant and the project number of the application to which the filing responds; (3) furnish the name, address, and telephone number of the person submitting the filing; and (4) otherwise comply with the requirements of 18 CFR 385.2001 through 385.2005. All comments, recommendations, terms and conditions or prescriptions must set forth their evidentiary basis and otherwise comply with the requirements of 18 CFR 4.34(b). Agencies may obtain copies of the application directly from the applicant.

Each filing must be accompanied by proof of service on all persons listed on the service list prepared by the Commission in this proceeding, in accordance with 18 CFR 4.34(b), and 385.2010.

Magalie R. Salas,
Secretary.

[FR Doc. E5–3144 Filed 6–17–05; 8:45 am]

BILLING CODE 6717–01–P

DEPARTMENT OF ENERGY

Western Area Power Administration

Loveland Area Projects—Western Area Colorado Missouri Balancing Authority-Rate Order No. WAPA 118

AGENCY: Western Area Power Administration, DOE.

ACTION: Notice of proposed rate.

SUMMARY: The Western Area Power Administration (Western) is proposing an adjustment for its Regulation and Frequency Response Service (Regulation) rate. The current rate, Rate Schedule No. L–AS3, will expire February 28, 2009.

Western is undertaking this rate adjustment in response to anticipated load and resource growth and the corresponding impact on the Western Area Colorado Missouri (WACM) Balancing Authority (WACM Balancing Authority). Prior to April 1, 2005, the WACM Balancing Authority was known as the WACM Control Area.

This proposed rate adjustment will ensure that users of Regulation service within the WACM Balancing Authority are appropriately assessed for their Regulation usage and that sufficient revenue is collected to cover provision of the service. Publication of this **Federal Register** notice begins the formal process for the proposed rate adjustment.

DATES: The consultation and comment period begins today and will end September 19, 2005. Western will present a detailed explanation of the proposed rate adjustment at the public information forum, to be held on the following date and time:

1. July 27, 2005, 10 a.m. MDT, Denver, CO.

Western will accept oral and written comments at the public comment forum, to be held on the following date and time:

1. July 27, 2005, 1 p.m. MDT, Denver, CO.

Western will accept written comments at any time during the consultation and comment period.

ADDRESSES: Send written comments to Edward F. Hulls, Operations Manager, Rocky Mountain Customer Service Region (RMR), Western Area Power Administration, P.O. Box 3700, Loveland, CO 80539-3003, e-mail LAPRegRateAdjust@wapa.gov. Western will post information about the rate process on its Web site at http://www.wapa.gov/rm/reg_rate_information.htm. Western will post official comments received via letter and e-mail after the close of the consultation and comment period. Written comments must be received by the end of the consultation and comment period to ensure they are considered in Western's decision process. Western's public information forum and public comment forum will both be held at the following location:

1. Radisson Hotel, Stapleton Plaza, 3333 Quebec Street, Denver, CO 80207, (303) 321-3500.

FOR FURTHER INFORMATION CONTACT: Mr. Edward F. Hulls, Operations Manager, RMR, Western Area Power Administration, P.O. Box 3700, Loveland, CO 80539-3003, telephone (970) 461-7566, e-mail LAPRegRateAdjust@wapa.gov; or Mr. Daniel T. Payton, Rates Manager, RMR, Western Area Power Administration, P.O. Box 3700, Loveland, CO 80539-3003, telephone (970) 461-7442, e-mail LAPRegRateAdjust@wapa.gov.

SUPPLEMENTARY INFORMATION: The current Rate Schedule L-AS3 was approved by the Deputy Secretary of Energy as part of Rate Order No. WAPA-106 (69 FR 1723-1738) on January 12, 2004, which placed formula rates for Loveland Area Projects (LAP) transmission and ancillary services into effect on an interim basis effective March 1, 2004. On January 31, 2005, the Federal Energy Regulatory Commission (Commission) confirmed and approved the formula rates under FERC Docket No. EF04-5182-000 (110 FERC 62,084). The approval of Rate Schedule L-AS3 covers the five (5) year period beginning on March 1, 2004, and ending on February 28, 2009.

The existing formula rate methodology for this rate will change under the proposed adjustment. Additionally, the proposed rate includes four different applications: (1) Load-based assessment; (2) generator-based assessment; (3) load-based with non-dispatchable resource(s) in the generation portfolio; and (4) assessment of self-provision for Regulation service, as follows:

(1) Load-Based Assessment

The first application of the Regulation rate will be assessed to entities serving load within the WACM Balancing Authority. This load-based rate will be assessed on an entity's auxiliary load (total metered load less Federal entitlements).

Western will periodically evaluate each entity's load and generation patterns and determine whether or not they are within normal limits (conforming vs. non-conforming). Based on these periodic evaluations, Western may adjust the Regulation charges for an entity.

(2) Generator-Based Assessment

The second application of this Regulation rate will be assessed to entities that have a generating resource, but serve no load, within the WACM Balancing Authority.

Based on the characteristics of the specific generator, Western will determine the amount of Regulation required for the resource. Based on Western's periodic evaluation of the resource's performance, the Regulation requirements for the resource may be adjusted.

(3) Load-Based Assessment With Non-Dispatchable Resource(s) In the Generation Portfolio

The third application of this rate will be assessed much like the load-based assessment, but will apply specifically to entities that also have non-dispatchable resource(s) in their generation portfolio.

In addition to the load-based charges outlined above, the entity will also be assessed the load-based Regulation charge for its non-dispatchable resource(s) equal to or less than 10 percent of that entity's auxiliary load. For non-dispatchable resource(s) beyond 10 percent of an entity's auxiliary load, Western will determine the amount of required Regulation and charge Western's pass-through cost for providing the service.

(4) Self-Provision Assessment

The fourth application of this rate will allow for the self-provision of Regulation service. The WACM Balancing Authority will allow entities serving load inside the Balancing Authority to self-provide Regulation service for their load(s) and resource(s). These entities will be known as Sub-Balancing Authorities. The Sub-Balancing Authorities must meet all of the following criteria to be eligible for self-provision of Regulation service:

1. Have a well-defined boundary with the WACM Balancing Authority equipped with

revenue-quality metering accuracy as defined by the North American Electric Reliability Council (NERC), to include megawatt (MW) flow data availability at 1-minute or smaller intervals.

2. Have Automatic Generation Control (AGC) capability.

3. Demonstrate Regulation capability.

4. Execute a contract with the Balancing Authority that requires the entity to:

- Provide all requested necessary data to the Balancing Authority
- Meet Sub-Balancing Authority Error Criteria (SBAEC)

Levels of Self-Provision

The type of operating system that the entity has in place will determine the level of self-provision provided. A requesting Sub-Balancing Authority must participate in regular performance testing and must provide sufficient documentation to receive full or partial credit for self-provision of Regulation service.

Sub-Balancing Authorities with automatic control of generation in response to an internal error signal within the subject system may wish to provide for their own Regulation requirements. The internal error signal will consist of the measurement of a schedule across a known boundary, compared to the actual flow across the known boundary. For these entities, Western will require one of the following criteria:

1. The Sub-Balancing Authority must be willing and able to respond to the WACM Balancing Authority's dynamic signal, proportional to the Sub-Balancing Authority's load within the Balancing Authority.

2. The Sub-Balancing Authority must allow the WACM Balancing Authority direct access to pulse the Sub-Balancing Authority's regulating units, proportional to their share of the Regulation requirement from the Balancing Authority.

3. The Sub-Balancing Authority and the WACM Balancing Authority may mutually agree to any other proven methodology and process.

A Sub-Balancing Authority that does not have automatic control of the generation, with all control reactions to an error signal processed manually, may desire to self-provide Regulation service. This type of entity will have its Regulation service usage determined by an hourly calculation that measures the first derivative of the averaged 1-minute change in the Sub-Balancing Authority's error signal. The only exception will be those hours when there is a reserve activation response call in which the entity either receives or provides energy to the reserve group.

Contributions for Frequency Bias

For those entities operating automated generation control in a tie-line bias mode, subject to the requirements for Frequency Responsive Reserves (FRR), the WACM Balancing Authority intends to offset the calculated Regulation requirement by an amount equal to the weighted average hourly frequency multiplied by an entity's frequency response bias factor. This will eliminate any Regulation costs incurred due to the provision of frequency support to the interconnection.

For a requesting entity to qualify for this accommodation, it must provide the WACM Balancing Authority with data required for physical confirmation of FRR participation. Minimum data that must be provided in real time includes the scan-by-scan information regarding individual unit capability, real MW output, and reactive megavolt-ampere output. Engineering data commonly used for system modeling must also be provided. Other data may be required and will be requested in writing. No credit(s) will be allowed for frequency bias contributions until the requested real-time and engineering data is provided to the WACM Balancing Authority.

Customer Accommodation

Western will work with entities unwilling to take Regulation service from the WACM Balancing Authority, self-provide it, or provide it from a third party, to meter their resources and/or loads out of the Balancing Authority. Until such time as that meter reconfiguration is accomplished, the WACM Balancing Authority will charge the entity for Regulation service under the rate then in effect.

Legal Authority

Western has determined that the proposed rate constitutes a minor rate adjustment as defined by 10 CFR part 903, and has established a 90-day comment period. During that time, Western will hold both a public information forum and a public comment forum. After review of public comments, and possible amendments or adjustments, Western will recommend that the Deputy Secretary of Energy approve the proposed rate on an interim basis.

Western is establishing this proposed rate adjustment for Regulation and Frequency Response Service under the Department of Energy Organization Act (42 U.S.C. 7152); the Reclamation Act of 1902 (ch 1093, 32 Stat. 388), as amended and supplemented by subsequent enactments, particularly

section 9(c) of the Reclamation Project Act of 1939 (43 U.S.C. 485h(c)) and section 5 of the Flood Control Act of 1944 (16 U.S.C. 825s); and other acts specifically applicable to the projects involved.

By Delegation Order No. 00-037.00, effective December 6, 2001, the Secretary of Energy delegated: (1) The authority to develop power and transmission rates to Western's Administrator; (2) the authority to confirm, approve, and place such rates into effect on an interim basis to the Deputy Secretary of Energy; and (3) the authority to confirm, approve, and place into effect on a final basis, to remand, or to disapprove such rates to the Federal Energy Regulatory Commission. Existing DOE procedures for public participation in power rate adjustments (10 CFR part 903) were published on September 18, 1985 (50 FR 37835).

Availability of Information

All brochures, studies, comments, letters, memoranda, e-mail, or other documents made or kept by Western for developing the proposed rate will be made available for inspection and copying at the Rocky Mountain Customer Service Region office located at 5555 East Crossroads Boulevard, Loveland, CO 80538.

Western's Customer Rate Brochure for this rate adjustment is available on Western's Web site at http://www.wapa.gov/rm/reg_rate_information.htm.

Regulatory Procedure Requirements

Regulatory Flexibility Analysis

The Regulatory Flexibility Act of 1980 (5 U.S.C. 601, *et seq.*) requires Federal agencies to perform a regulatory flexibility analysis if a final rule is likely to have a significant economic impact on a substantial number of small entities and there is a legal requirement to issue a general notice of proposed rulemaking. This action does not require a regulatory flexibility analysis since it is a rulemaking of particular applicability involving rates or services applicable to public property.

Environmental Compliance

In compliance with the National Environmental Policy Act of 1969 (NEPA) (42 U.S.C. 4321, *et seq.*); Council on Environmental Quality Regulations (40 CFR parts 1500-1508); and DOE NEPA Regulations (10 CFR part 1021), Western has determined this action is categorically excluded from preparing an environmental assessment or an environmental impact statement.

Determination Under Executive Order 12866

Western has an exemption from centralized regulatory review under Executive Order 12866; accordingly, no clearance of this notice by the Office of Management and Budget is required.

Small Business Regulatory Enforcement Fairness Act

Western has determined that this rule is exempt from congressional notification requirements under 5 U.S.C. 801 because the action is a rulemaking of particular applicability relating to rates or services and involves matters of procedure.

Dated: April 28, 2005.

Michael S. Hacskeylo,
Administrator.

[FR Doc. 05-12072 Filed 6-17-05; 8:45 am]

BILLING CODE 6450-01-P

EXPORT-IMPORT BANK OF THE UNITED STATES

Economic Impact Policy

This notice is to inform the public that the Export-Import Bank of the United States has received an application to finance the export of approximately \$22.3 million in U.S. equipment to a producer of denim in Turkey. The exports will expand the Turkish buyer's current production of denim by about 15 million square meters per year. Available information indicates that the denim will be sold in Turkey, Europe and the Former Soviet Union, starting in the latter part of 2005. Interested parties may submit comments on this transaction by e-mail to economic.impact@exim.gov or by mail to 811 Vermont Avenue, NW., Room 1238, Washington, DC 20571, within 14 days of the date this notice appears in the **Federal Register**.

Helene S. Walsh,

Director, Policy Oversight and Review.

[FR Doc. 05-12028 Filed 6-17-05; 8:45 am]

BILLING CODE 6690-01-P

FEDERAL RESERVE SYSTEM

Agency Information Collection Activities: Proposed Collection; Comment Request

AGENCY: Board of Governors of the Federal Reserve System.

SUMMARY:

Background

On June 15, 1984, the Office of Management and Budget (OMB)

delegated to the Board of Governors of the Federal Reserve System (Board) its authority under the Paperwork Reduction Act, as per 5 CFR 1320.16, to approve of and assign OMB control numbers to collection of information requests and requirements conducted or sponsored by the Board under conditions set forth in 5 CFR 1320 Appendix A.1. Board-approved collections of information are incorporated into the official OMB inventory of currently approved collections of information. Copies of the OMB 83-Is and supporting statements and approved collection of information instruments are placed into OMB's public docket files. The Federal Reserve may not conduct or sponsor, and the respondent is not required to respond to, an information collection that has been extended, revised, or implemented on or after October 1, 1995, unless it displays a currently valid OMB control number.

Request for Comment on Information Collection Proposals

The following information collection, which is being handled under this delegated authority, has received initial Board approval and is hereby published for comment. At the end of the comment period, the proposed information collection, along with an analysis of comments and recommendations received, will be submitted to the Board for final approval under OMB delegated authority. Comments are invited on the following:

- Whether the proposed collection of information is necessary for the proper performance of the Federal Reserve's functions; including whether the information has practical utility;
- The accuracy of the Federal Reserve's estimate of the burden of the proposed information collection, including the validity of the methodology and assumptions used;
- Ways to enhance the quality, utility, and clarity of the information to be collected; and
- Ways to minimize the burden of information collection on respondents, including through the use of automated collection techniques or other forms of information technology.

DATES: Comments must be submitted on or before August 19, 2005.

ADDRESSES: You may submit comments, identified by FR 1379 using any of the following methods:

- Agency Web site: <http://www.federalreserve.gov>. Follow the instructions for submitting comments at <http://www.federalreserve.gov/generalinfo/foia/ProposedRegs.cfm>.

- Federal eRulemaking Portal: <http://www.regulations.gov>. Follow the instructions for submitting comments.

- E-mail: regs.comments@federalreserve.gov. Include docket number in the subject line of the message.

- FAX: 202/452-3819 or 202/452-3102.

- Mail: Jennifer J. Johnson, Secretary, Board of Governors of the Federal Reserve System, 20th Street and Constitution Avenue, NW., Washington, DC 20551.

All public comments are available from the Board's Web site at <http://www.federalreserve.gov/generalinfo/foia/ProposedRegs.cfm> as submitted, except as necessary for technical reasons. Accordingly, your comments will not be edited to remove any identifying or contact information. Public comments may also be viewed electronically or in paper in Room MP-500 of the Board's Martin Building (20th and C Streets, NW.) between 9 a.m. and 5 p.m. on weekdays.

FOR FURTHER INFORMATION CONTACT: A copy of the proposed form and instructions, the Paperwork Reduction Act Submission (OMB 83-I), supporting statement, and other documents that will be placed into OMB's public docket files once approved may be requested from the agency clearance officer, whose name appears below.

Michelle Long, Federal Reserve Board Clearance Officer (202-452-3829), Division of Research and Statistics, Board of Governors of the Federal Reserve System, Washington, DC 20551. Telecommunications Device for the Deaf (TDD) users may contact (202-263-4869), Board of Governors of the Federal Reserve System, Washington, DC 20551.

Proposal to approve under OMB delegated authority the extension for three years, without revision, of the following report:

Report title: Consumer Satisfaction Questionnaire.

Agency form number: FR 1379.

OMB control number: 7100-0135.

Frequency: Event-generated.

Reporters: Consumers.

Annual reporting hours: 170.

Estimated average hours per response: 20 minutes.

Number of respondents: 512.

General description of report: This information collection is voluntary (15 U.S.C. 57(a)(f)(1)) and is not usually given confidential treatment under the Freedom of Information Act (FOIA). However, if a respondent provides information not specifically solicited on the form, that information may be exempt from disclosure under FOIA (5

U.S.C. 552 (b)(4), (b)(6), or (b)(7)) upon specific request from the respondent.

Abstract: The questionnaire is sent to consumers who have filed complaints against state member banks. It is used to determine whether complainants are satisfied with the way the Federal Reserve System handled their complaints and to solicit suggestions for improving the complaint investigation process.

Board of Governors of the Federal Reserve System, June 15, 2005.

Jennifer J. Johnson,
Secretary of the Board.

[FR Doc. 05-12088 Filed 6-17-05; 8:45 am]

BILLING CODE 6210-01-P

FEDERAL RESERVE SYSTEM

Change in Bank Control Notices; Acquisition of Shares of Bank or Bank Holding Companies

The notificants listed below have applied under the Change in Bank Control Act (12 U.S.C. 1817(j)) and § 225.41 of the Board's Regulation Y (12 CFR 225.41) to acquire a bank or bank holding company. The factors that are considered in acting on the notices are set forth in paragraph 7 of the Act (12 U.S.C. 1817(j)(7)).

The notices are available for immediate inspection at the Federal Reserve Bank indicated. The notices also will be available for inspection at the office of the Board of Governors. Interested persons may express their views in writing to the Reserve Bank indicated for that notice or to the offices of the Board of Governors. Comments must be received not later than July 1, 2005.

A. Federal Reserve Bank of Minneapolis (Jacqueline G. King, Community Affairs Officer) 90 Hennepin Avenue, Minneapolis, Minnesota 55480-0291:

1. *Nancy A. Malitz*, Detroit, Michigan; and *Barbara G. Lee*, Kalispell, Montana; to acquire voting shares of Ravalli County Bankshares, Inc., Hamilton, Montana, and thereby indirectly acquire voting shares of Ravalli County Bank, Hamilton, Montana, and West One Bank, Kalispell, Montana.

Board of Governors of the Federal Reserve System, June 14, 2005.

Margaret McCloskey Shanks,
Associate Secretary of the Board.

[FR Doc. 05-12036 Filed 6-17-05; 8:45 am]

BILLING CODE 6210-01-S

FEDERAL RESERVE SYSTEM**Formations of, Acquisitions by, and Mergers of Bank Holding Companies**

The companies listed in this notice have applied to the Board for approval, pursuant to the Bank Holding Company Act of 1956 (12 U.S.C. 1841 *et seq.*) (BHC Act), Regulation Y (12 CFR Part 225), and all other applicable statutes and regulations to become a bank holding company and/or to acquire the assets or the ownership of, control of, or the power to vote shares of a bank or bank holding company and all of the banks and nonbanking companies owned by the bank holding company, including the companies listed below.

The applications listed below, as well as other related filings required by the Board, are available for immediate inspection at the Federal Reserve Bank indicated. The application also will be available for inspection at the offices of the Board of Governors. Interested persons may express their views in writing on the standards enumerated in the BHC Act (12 U.S.C. 1842(c)). If the proposal also involves the acquisition of a nonbanking company, the review also includes whether the acquisition of the nonbanking company complies with the standards in section 4 of the BHC Act (12 U.S.C. 1843). Unless otherwise noted, nonbanking activities will be conducted throughout the United States. Additional information on all bank holding companies may be obtained from the National Information Center website at www.ffiec.gov/nic/.

Unless otherwise noted, comments regarding each of these applications must be received at the Reserve Bank indicated or the offices of the Board of Governors not later than July 13, 2005.

A. Federal Reserve Bank of Minneapolis (Jacqueline G. Nicholas, Community Affairs Officer) 90 Hennepin Avenue, Minneapolis, Minnesota 55480-0291:

1. *Vision Bancshares, Inc.*, St. Louis Park, Minnesota; to become a bank holding company by acquiring 100 percent of the voting shares of Vision Bank, St. Louis Park, Minnesota.

Board of Governors of the Federal Reserve System, June 14, 2005.

Margaret McCloskey Shanks,

Associate Secretary of the Board.

[FR Doc. 05-12038 Filed 6-17-05; 8:45 am]

BILLING CODE 6210-01-S

FEDERAL RESERVE SYSTEM**Notice of Proposals to Engage in Permissible Nonbanking Activities or to Acquire Companies that are Engaged in Permissible Nonbanking Activities**

The companies listed in this notice have given notice under section 4 of the Bank Holding Company Act (12 U.S.C. 1843) (BHC Act) and Regulation Y (12 CFR Part 225) to engage *de novo*, or to acquire or control voting securities or assets of a company, including the companies listed below, that engages either directly or through a subsidiary or other company, in a nonbanking activity that is listed in § 225.28 of Regulation Y (12 CFR 225.28) or that the Board has determined by Order to be closely related to banking and permissible for bank holding companies. Unless otherwise noted, these activities will be conducted throughout the United States.

Each notice is available for inspection at the Federal Reserve Bank indicated. The notice also will be available for inspection at the offices of the Board of Governors. Interested persons may express their views in writing on the question whether the proposal complies with the standards of section 4 of the BHC Act. Additional information on all bank holding companies may be obtained from the National Information Center website at www.ffiec.gov/nic/.

Unless otherwise noted, comments regarding the applications must be received at the Reserve Bank indicated or the offices of the Board of Governors not later than July 1, 2005.

A. Federal Reserve Bank of Boston (Richard Walker, Community Affairs Officer) P.O. Box 55882, Boston, Massachusetts 02106-2204:

1. *Boston Private Financial Holdings, Inc.*, Boston, Massachusetts; to acquire Gibraltar Financial Corporation, Coral Gables, Florida, and thereby indirectly acquire Gibraltar Bank, FSB, Coral Gables, Florida, and engage in operating a saving and loan association, pursuant to section 225.28(b)(4)(ii) of Regulation Y. Comments regarding this application must be received by July 11, 2005.

B. Federal Reserve Bank of New York (Jay Bernstein, Bank Supervision Officer) 33 Liberty Street, New York, New York 10045-0001:

1. *Banco Do Brasil, S.A.*, Brasilia, Brazil; to engage *de novo* through its subsidiary, Banco Do Brasil Securities LLC, New York, New York, in securities brokerage and riskless principal services and acting as agent in the private placement of securities, pursuant to section 225.28(b)(7) of Regulation Y.

Board of Governors of the Federal Reserve System, June 14, 2005.

Margaret McCloskey Shanks,

Associate Secretary of the Board.

[FR Doc. 05-12035 Filed 6-17-05; 8:45 am]

BILLING CODE 6210-01-S

FEDERAL RESERVE SYSTEM**Consumer Advisory Council; Solicitation of Nominations for Membership**

AGENCY: Board of Governors of the Federal Reserve System.

ACTION: Notice.

SUMMARY: The Board is inviting the public to nominate qualified individuals for appointment to its Consumer Advisory Council, whose membership represents interests of consumers, communities, and the financial services industry. New members will be selected for three-year terms that will begin in January 2006. The Board expects to announce the selection of new members by year-end 2005.

DATES: Nominations must be received by August 26, 2005.

Nominations Not Received By August 26 May Not Be Considered.

ADDRESSES: Nominations must include a *resume* for each nominee. Electronic nominations are preferred. The appropriate form can be accessed at: <http://www.federalreserve.gov/forms/cacnominationform.cfm>.

If electronic submission is not feasible, the nominations can be mailed (not sent by facsimile) to Terri Johnsen, Associate Director, Division of Consumer and Community Affairs, Board of Governors of the Federal Reserve System, Washington, DC 20551.

FOR FURTHER INFORMATION CONTACT: Ann Bistay, Secretary of the Council, Division of Consumer and Community Affairs, (202) 452-6470, Board of Governors of the Federal Reserve System, Washington, DC 20551.

SUPPLEMENTARY INFORMATION: The Consumer Advisory Council was established in 1976 at the direction of the Congress to advise the Federal Reserve Board on the exercise of its duties under the Consumer Credit Protection Act and on other consumer-related matters. The Council by law represents the interests both of consumers and of the financial services industry (15 U.S.C. 1691(b)). Under the Rules of Organization and Procedure of the Consumer Advisory Council (12 CFR 267.3), members serve three-year terms that are staggered to provide the Council with continuity.

New members will be selected for terms beginning January 1, 2006, to replace members whose terms expire in December 2005. The Board expects to announce its appointment of new members in early January. Nomination letters should include:

- A resume;
- Information about past and present positions held by the nominee, dates, and description of responsibilities;
- A description of special knowledge, interests, or experience related to community reinvestment, consumer protection regulations, consumer credit, or other consumer financial services;
- Full name, title, organization name, organization description for both the nominee and the nominator;
- Current address, telephone and fax numbers for both the nominee and the nominator; and
- Positions held in community organizations, and on councils and boards.

Individuals may nominate themselves.

The Board is interested in candidates who have familiarity with consumer financial services, community reinvestment, and consumer protection regulations, and who are willing to express their views. Candidates do not have to be experts on all levels of consumer financial services or community reinvestment, but they should possess some basic knowledge of the area. They must be able and willing to make the necessary time commitment to participate in conference calls, and prepare for and attend meetings three times a year (usually for two days, including committee meetings). The meetings are held at the Board's offices in Washington, DC. The Board pays travel expenses, lodging, and a nominal honorarium.

In making the appointments, the Board will seek to complement the background of continuing Council members in terms of affiliation and geographic representation, and to ensure the representation of women and minority groups. The Board may consider prior years' nominees and does not limit consideration to individuals nominated by the public when making its selection.

Council members whose terms end as of December 31, 2005, are:

Susan Bredehoft, Senior Vice President, Compliance Risk Management, Commerce Bank, N.A., Cherry Hill, New Jersey
 Dan Dixon, Group Senior Vice President, World Savings Bank, FSB, Washington, District of Columbia
 James Garner, Senior Vice President and General Counsel, North America

Consumer Finance for Citigroup, Baltimore, Maryland
 R. Charles Gatson, Vice President/Chief Operating Officer, Swope Community Builders, Kansas City, Missouri
 James King, President and Chief Executive Officer, Community Redevelopment Group, Cincinnati, Ohio
 Elsie Meeks, Executive Director, First Nations Oweesta Corporation, Rapid City, South Dakota
 Mark Pinsky, President and Chief Executive Officer, National Community Capital Association, Philadelphia, Pennsylvania
 Benjamin Robinson, III, President and Chief Executive Officer, Innovative Risk Solutions, LLC, Charlotte, North Carolina
 Diane Thompson, Supervising Attorney, Land of Lincoln Legal Assistance, Foundation, Inc., East St. Louis, Illinois
 Clint Walker, General Counsel/Chief Administrative Officer, Juniper Bank, Wilmington, Delaware
 Council members whose terms continue through 2006 and 2007 are:
 Stella Adams, Executive Director, North Carolina Fair Housing Center, Durham, North Carolina
 Dennis L. Algieri, Senior Vice President, Compliance and Community Affairs, The Washington Trust Company, Westerly, Rhode Island
 Faith Anderson, Vice President—Legal & Compliance and General Counsel, American Airlines Federal Credit Union, Fort Worth, Texas
 Sheila Canavan, Consumer Attorney, Law Office of Sheila Canavan, Moab, Utah
 Carolyn Carter, Attorney, National Consumer Law Center, Gettysburg, Pennsylvania
 Mike Cook, Vice President and Assistant Treasurer, Wal-Mart Stores, Inc., Bentonville, Arkansas
 Donald S. Currie, Executive Director, Community Development Corporation of Brownsville, Brownsville, Texas
 Anne Diedrick, Senior Vice President, JPMorgan Chase Bank, New York, New York
 Hattie B. Dorsey, President and Chief Executive Officer, Atlanta Neighborhood Development Partnership, Atlanta, Georgia
 Kurt Eggert, Associate Professor of Law and Director of Clinical Legal Education, Chapman University School of Law, Orange, California
 Deborah Hickok, Chief Executive Officer and President, ACH Commerce, LLC, Ooltewah, Tennessee

Bruce B. Morgan, Chairman, President and Chief Executive Officer, Valley State Bank, Roeland Park, Kansas
 Mary Jane Seebach, Executive Vice President, Chief Compliance Officer, Countrywide Financial Corporation, Calabasas, California
 Lisa Sodeika, Senior Vice President—Corporate Affairs, HSBC North America Holdings Inc., Prospect Heights, Illinois
 Paul J. Springman, Chief Marketing Officer, Equifax, Atlanta, Georgia
 Forrest F. Stanley, Senior Vice President and Deputy General Counsel, KeyBank National Association, Cleveland, Ohio
 Lori R. Swanson, Solicitor General, Office of the Minnesota Attorney General, St. Paul, Minnesota
 Anselmo Villarreal, Executive Director, LaCasa de Esperanza, Inc., Waukesha, Wisconsin
 Kelly K. Walsh, Senior Vice President, Bank of Hawaii, Compliance & Community Development, Honolulu, Hawaii
 Marva E. Williams, Senior Vice President, Woodstock Institute, Chicago, Illinois

Board of Governors of the Federal Reserve System, June 14, 2005.

Robert deV. Frierson,

Deputy Secretary of the Board.

[FR Doc. 05–12056 Filed 6–17–05; 8:45 am]

BILLING CODE 6210–01–P

FEDERAL TRADE COMMISSION

[File No. 051 0125]

Chevron Corporation and Unocal Corporation; Analysis of Agreement Containing Consent Order To Aid Public Comment

AGENCY: Federal Trade Commission.

ACTION: Proposed consent agreement.

SUMMARY: The consent agreement in this matter settles alleged violations of federal law prohibiting unfair or deceptive acts or practices or unfair methods of competition. The attached Analysis to Aid Public Comment describes both the allegations in the complaint and the terms of the consent order—embodied in the consent agreement—that would settle these allegations.

DATES: Comments must be received on or before July 9, 2005.

ADDRESSES: Interested parties are invited to submit written comments. Comments should refer to “Chevron Corporation, *et al.*, File No. 051 0125,” to facilitate the organization of

comments. A comment filed in paper form should include this reference both in the text and on the envelope, and should be mailed or delivered to the following address: Federal Trade Commission/Office of the Secretary, Room 159-H, 600 Pennsylvania Avenue, NW., Washington, DC 20580. Comments containing confidential material must be filed in paper form, must be clearly labeled "Confidential," and must comply with Commission Rule 4.9(c). 16 CFR 4.9(c) (2005).¹ The FTC is requesting that any comment filed in paper form be sent by courier or overnight service, if possible, because U.S. postal mail in the Washington area and at the Commission is subject to delay due to heightened security precautions. Comments that do not contain any nonpublic information may instead be filed in electronic form as part of or as an attachment to email messages directed to the following email box: consentagreement@ftc.gov.

The FTC Act and other laws the Commission administers permit the collection of public comments to consider and use in this proceeding as appropriate. All timely and responsive public comments, whether filed in paper or electronic form, will be considered by the Commission, and will be available to the public on the FTC Web site, to the extent practicable, at <http://www.ftc.gov>. As a matter of discretion, the FTC makes every effort to remove home contact information for individuals from the public comments it receives before placing those comments on the FTC Web site. More information, including routine uses permitted by the Privacy Act, may be found in the FTC's privacy policy, at <http://www.ftc.gov/ftc/privacy.htm>.

FOR FURTHER INFORMATION CONTACT: Dennis Johnson, Bureau of Competition, 600 Pennsylvania Avenue, NW., Washington, DC 20580, (202) 326-2712.

SUPPLEMENTARY INFORMATION: Pursuant to section 6(f) of the Federal Trade Commission Act, 38 Stat. 721, 15 U.S.C. 46(f), and § 2.34 of the Commission Rules of Practice, 16 CFR 2.34, notice is hereby given that the above-captioned consent agreement containing a consent order to cease and desist, having been filed with and accepted, subject to final approval, by the Commission, has been placed on the public record for a period

of thirty (30) days. The following Analysis to Aid Public Comment describes the terms of the consent agreement, and the allegations in the complaint. An electronic copy of the full text of the consent agreement package can be obtained from the FTC Home Page (for June 10, 2005), on the World Wide Web, at <http://www.ftc.gov/os/2005/06/index.htm>. A paper copy can be obtained from the FTC Public Reference Room, Room 130-H, 600 Pennsylvania Avenue, NW., Washington, DC 20580, either in person or by calling (202) 326-2222.

Public comments are invited, and may be filed with the Commission in either paper or electronic form. All comments should be filed as prescribed in the **ADDRESSES** section above, and must be received on or before the date specified in the **DATES** section.

Analysis of Agreement Containing Consent Order To Aid Public Comment

I. Introduction

The Federal Trade Commission ("Commission" or "FTC") has issued a complaint ("Complaint") alleging that the proposed merger of Chevron Corporation ("Chevron," formerly ChevronTexaco Corporation) and Unocal Corporation ("Unocal") (collectively "Respondents") would violate Section 7 of the Clayton Act, as amended, 15 U.S.C. 18, and Section 5 of the Federal Trade Commission Act, as amended, 15 U.S.C. 45, and has entered into an agreement containing consent order ("Agreement Containing Consent Order") pursuant to which Respondents agree to be bound by a proposed consent order ("Proposed Consent Order"). The Proposed Consent Order remedies the likely anticompetitive effects arising from Respondents' proposed merger, as alleged in the Complaint.

II. Description of the Parties and the Transaction

A. Chevron

Chevron is a major international energy firm with operations in North America and about 180 foreign countries in Europe, Africa, South America, Central America, Indonesia, and the Asia-Pacific region. Its petroleum operations consist of exploring for, developing and producing crude oil and natural gas; refining crude oil into finished petroleum products; marketing crude oil, natural gas, and various finished products derived from petroleum; and transporting crude oil, natural gas, and finished petroleum products by pipeline, marine vessels, and other means. The company operates light petroleum refineries for products

such as gasoline, jet fuel, kerosene and fuel oil at Pascagoula, Mississippi; El Segundo, California; Richmond, California; Salt Lake City, Utah; and Kapolei, Hawaii. Chevron is a major refiner and marketer of gasoline that meets the requirements of the California Air Resources Board ("CARB"). Chevron also has operations for the manufacture and marketing of commodity petrochemicals for industrial uses and additives for fuels and lubricants. For 2004, the company had total revenues of approximately \$155.3 billion and total assets of approximately \$93.2 billion.

B. Unocal

Unocal is also a major international energy firm with operations in North America, Asia, and other locations around the world. Its primary activities are oil and gas exploration, development and production. It has oil and gas operations located in various countries, including Thailand, Myanmar, Indonesia, Azerbaijan, Bangladesh, and Vietnam. Unocal sold most of its downstream operations in the United States to another company in the mid-1990's. As a result, Unocal has no downstream operations in refining or gasoline retailing, and with a few exceptions almost all of Unocal's operations are in the upstream segment of the industry, i.e., exploration and production. The company had total revenues for 2004 of approximately \$8.2 billion and total assets of approximately \$13.1 billion.

III. The Transaction

Pursuant to an Agreement and Plan of Merger dated April 4, 2005, Chevron plans to acquire 100% of the voting securities of Unocal. Unocal will merge into a direct wholly-owned subsidiary of Chevron, with the subsidiary continuing as the surviving entity and a wholly-owned subsidiary of Chevron. Under the terms of the agreement, Unocal shareholders may elect to receive 1.03 shares of Chevron stock, \$65 in cash, or the combination of \$16.25 in cash and 0.7725 of a share of Chevron common stock. The election is subject to the limitation that 75% of the outstanding shares of Unocal common stock will be exchanged for Chevron common stock and 25% will be exchanged for cash, with prorationing in the event the cash election is oversubscribed or undersubscribed. The total value of the transaction is estimated at approximately \$18 billion, which includes approximately \$1.6 billion in assumed debt.

The transaction is subject to various closing conditions, including the approval of Unocal shareholders and the

¹ The comment must be accompanied by an explicit request for confidential treatment, including the factual and legal basis for the request, and must identify the specific portions of the comment to be withheld from the public record. The request will be granted or denied by the Commission's General Counsel, consistent with applicable law and the public interest. See Commission Rule 4.9(c), 16 CFR 4.9(c).

expiration or early termination of the waiting period under the Hart-Scott-Rodino Act, 15 U.S.C. 18A. The parties expect to close the transaction as soon as practicable after the last of the conditions to closing have been satisfied.

IV. The Complaint

The Complaint alleges that the merger of Chevron and Unocal would violate Section 7 of the Clayton Act, as amended, 15 U.S.C. 18, and Section 5 of the Federal Trade Commission Act, as amended, 15 U.S.C. 45, by substantially lessening competition in the refining and marketing of reformulated gasoline that has been approved by the California Air Resources Board ("CARB") for sale in California. Through its wholly-owned subsidiary, Union Oil Company of California ("Union Oil"), Unocal owns a portfolio of five U.S. patents relating to reformulated gasoline ("RFG"). These patents (the "Relevant U.S. Patents") cover the production and supply of CARB RFG, particularly in warmer weather months. To remedy the alleged anticompetitive effects of the merger, the Proposed Consent Order requires Respondents to take certain actions, including (1) to cease and desist from any efforts to assert or enforce any of the Relevant U.S. Patents against any person, to recover any damages or costs for alleged infringements of any of the Relevant U.S. Patents, or to collect any fees, royalties or other payments for the practice of the Relevant U.S. Patents; and (2) to take the necessary actions to dedicate to the public the remaining terms of the patents.

According to the Complaint, gasoline is a motor fuel used in automobiles and other vehicles. It is produced in various grades and formulations, including conventional unleaded gasoline, low emissions reformulated gasoline ("RFG"), California Air Resources Board ("CARB") compliant reformulated gasoline, and others. CARB compliant reformulated gasoline ("CARB RFG") is a type of gasoline that meets the specifications of the California Air Resources Board. CARB RFG is cleaner burning and causes less air pollution than conventional unleaded gasoline. The sale of any gasoline other than CARB RFG is prohibited in California, and there is no substitute for CARB RFG as a fuel for automobiles and other vehicles that use gasoline purchased in California. As a result, CARB RFG is a relevant line of commerce in which to analyze the potential effects of the merger.

CARB RFG is produced primarily in California and at a few other locations on the West Coast. The Complaint

alleges that the state of California, and smaller areas contained therein, are relevant sections of the country in which to analyze the potential effects of the merger.

Chevron is a leading refiner and marketer of CARB RFG. Unocal does not refine or market CARB RFG. However, through its wholly-owned subsidiary, Union Oil, Unocal owns Relevant U.S. Patents relating to CARB RFG. Refiners must use the technology covered by the Unocal Relevant U.S. Patents for producing CARB RFG during warmer weather months—i.e., CARB "summertime" gasoline. Thus, Unocal controls an important input used by CARB refiners to produce CARB gasoline.

Unocal licenses its RFG patents to others in exchange for payments ranging from 1.2 to 3.4 cents per gallon. In addition, Unocal has won a patent infringement suit against major refiners of CARB RFG and obtained a court judgment awarding Unocal royalties of 5.75 cents per infringing gallon produced in California.

There are relatively few producers of CARB RFG. As a result, the relevant markets for the refining and marketing of CARB RFG are either highly concentrated or moderately concentrated. The Complaint further alleges that entry into the relevant lines of commerce in the relevant sections of the country is difficult and would not be timely, likely or sufficient to prevent anticompetitive effects resulting from the proposed merger.

The Complaint states that, because of factors such as Unocal's perception of possible actions by the California Air Resources Board or other governmental authorities, Unocal is likely to be constrained in charging the full monopoly level price to licensees of the Unocal patents. Moreover, Unocal has no operations at downstream levels of the industry through which it could attempt to recoup any additional profits.

Because of its significant operations at the refining and marketing levels, Chevron will have a greater ability than Unocal to obtain additional profits by coordinating with its competitors at the downstream refining and marketing levels. As part of Unocal's license agreements, Unocal regularly collects detailed reports from licensees about their production of CARB RFG and other refinery operations. By obtaining the Unocal patents, Chevron would receive additional information about the production of competitors and other information not otherwise available to members of the industry. Chevron could facilitate coordination among refiners and marketers of CARB RFG by using

this information to monitor a collusive agreement and thus detect cheating on a collusive agreement. The anticompetitive effects from such coordination would be likely to outweigh any efficiencies that would be obtained by the integrated firm.

As a result, the Complaint charges that the effect of the proposed merger, if consummated, may be substantially to lessen competition in the marketing and refining of CARB RFG in the relevant sections of the country, in violation of Section 7 of the Clayton Act, as amended, 15 U.S.C. 18, and Section 5 of the Federal Trade Commission Act, as amended, 15 U.S.C. 45.

V. Resolution of the Competitive Concerns

The Commission has provisionally entered into an Agreement Containing Consent Order with Chevron and Unocal in settlement of the Complaint. The Agreement Containing Consent Orders contemplates that the Commission would issue the Complaint and enter the Proposed Consent Order requiring the relief described below.

In order to remedy the anticompetitive effects that have been identified, Chevron and Unocal have agreed to take several actions. First, they will cease and desist from any and all efforts, and will not undertake any new efforts, to assert or enforce any of Unocal's Relevant U.S. Patents against any person, to recover any damages or costs for alleged infringements of any of the Relevant U.S. Patents, or to collect any fees, royalties or other payments, in cash or in kind, for the practice of any of the Relevant U.S. Patents, including but not limited to fees, royalties, or other payments, in cash or in kind, to be collected pursuant to any License Agreement. These obligations become effective as of the "Merger Effective Date," which is defined as the earlier of (1) the date that the certificate of merger for the Merger is filed with the Secretary of State of Delaware or such later time as specified in such certificate of merger, or (2) the date that Chevron acquires control of Unocal Corporation, as "control" is defined by 16 CFR 801.1(b).

Second, the Proposed Consent Order requires that, within thirty (30) days following the Merger Effective Date, Respondents shall file, or cause to be filed, with the United States Patent and Trademark Office, the necessary documents pursuant to 35 U.S.C. 253, 37 CFR 1.321, and the Manual of Patent Examining Procedure to disclaim or dedicate to the public the remaining term of the Relevant U.S. Patents. The Proposed Consent Order further requires

that Respondents shall correct as necessary, and shall not withdraw or seek to nullify, any disclaimers or dedications filed pursuant to the order.

Third, the order requires that, within thirty (30) days following the Merger Effective Date, Respondents shall move to dismiss, with prejudice, all pending legal actions relating to the alleged infringement of any Relevant U.S. Patents, including but not limited to the following actions pending in the United States District Court for the Central District of California: *Union Oil Company of California v. Atlantic Richfield Company, et al.*, Case No. CV-95-2379-CAS and *Union Oil Company of California v. Valero Energy Corporation*, Case No. CV-02-00593 SVW.

Paragraph V of the Proposed Consent Order requires Respondents to distribute a copy of the Order and the Complaint in this matter to certain interested parties, including (1) any person that either Respondent has contacted regarding possible infringement of any of the Relevant U.S. Patents, (2) any person against which either Respondent is, or was, involved in any legal action regarding possible infringement of any of the Relevant U.S. Patents, (3) any licensee or other person from which either Respondent has collected any fees, royalties or other payments, in cash or in kind, for the practice of the Relevant U.S. Patents, and (4) any person that either Respondent has contacted with regard to the possible collection of any fees, royalties or other payments, in cash or in kind, for the practice of the Relevant U.S. Patents.

Paragraph V also requires Respondents to distribute a copy of the Order and the Complaint to present and future officers and directors of Respondents having responsibility for any of Respondents' obligations under the Order, and to employees and agents having managerial responsibility for any of Respondents' obligations under the Order.

Paragraphs VI, VII and VIII of the Proposed Consent Order contain standard reporting, access, and notification provisions designed to allow the Commission to monitor compliance with the order. Paragraph IX provides that the Order shall terminate twenty (20) years after the date it becomes final.

VI. Opportunity for Public Comment

The Proposed Consent Order has been placed on the public record for thirty (30) days for receipt of comments by interested persons. Comments received during this thirty day comment period

will become part of the public record. After thirty (30) days, the Commission will again review the Proposed Order and the comments received and will decide whether it should withdraw from the Proposed Order or make final the agreement's Proposed Order.

By accepting the Proposed Order subject to final approval, the Commission anticipates that the competitive problems alleged in the Complaint will be resolved. The purpose of this analysis is to invite public comment on the Proposed Order, and to aid the Commission in its determination of whether it should make final the Proposed Order contained in the agreement. This analysis is not intended to constitute an official interpretation of the Proposed Order, nor is it intended to modify the terms of the Proposed Order in any way.

Statement of the Federal Trade Commission

The Federal Trade Commission has voted unanimously (4-0-1, with Chairman Majoras recused) to accept two linked consent agreements that resolve both the Commission's monopolization case against Unocal Corporation's subsidiary Union Oil Company of California and any antitrust concerns arising from Chevron Corporation's pending acquisition of Unocal. The key element in the settlements, which will become effective when the acquisition is completed, is Chevron's agreement not to enforce certain Union Oil patents that potentially could have increased gasoline prices in California by over \$500 million a year (or almost six cents per gallon). This agreement provides the full relief that the Commission sought in its administrative litigation with Union Oil and also addresses the only possible objection to the Chevron/Unocal acquisition.

On April 4, 2005, Chevron agreed to acquire Unocal in a transaction valued at approximately \$18 billion. Chevron and Unocal both have extensive oil and gas operations. However, nearly all of Unocal's operations are in the so-called "upstream" segment of the business—namely, the exploration and production of crude oil and natural gas. Unocal has no refineries or gasoline stations in the United States or anywhere else in the world, and has few other "downstream" operations. As a result, virtually all of the competitive overlaps between the two firms are in unconcentrated upstream markets, and the merger thus creates no competitive risk. For example, Chevron and Unocal combined have only 2.7 percent of world crude oil production, 0.77

percent of world crude oil reserves, 11.3 percent of U.S. crude oil production, and 11.4 percent of U.S. crude oil reserves.² We want to emphasize that the merger will have no impact whatsoever on concentration at the retail or refinery levels. It is clear from all we have seen that Chevron's primary motivation is to gain access to Unocal's upstream oil reserves.

The only potential competitive concern with Chevron's proposed acquisition of Unocal involved patents held by Union Oil—the same group of patents involved in the Commission's monopolization case against Union Oil. In order to explain why this is so, it is necessary first to discuss the issues in this monopolization case.

The Commission's administrative complaint against Union Oil charged that the firm had illegally acquired monopoly power in the technology market for producing certain low-emission gasoline mandated by the California Air Resources Board (CARB) for sale and use in California for up to eight months of the year. According to the complaint, Union Oil misrepresented to CARB that certain gasoline research was non-proprietary and in the public domain, while at the same time it pursued a patent that would enable it to charge substantial royalties if the research results were used by CARB in the development of regulations. The complaint further asserted that Union Oil similarly misled its fellow members of private industry groups, which were also participating in the CARB rulemaking process. As a result, if Union Oil were permitted to enforce its patent rights, companies producing this low-emission CARB gasoline would be required to pay royalties to Union Oil, the bulk of which would be passed on to California consumers in the form of higher gasoline prices. The Commission estimated that Union Oil's enforcement of these patents could potentially result in over \$500 million of additional consumer costs each year. The complaint sought an order requiring Union Oil to cease and desist from all efforts to assert these patents against those manufacturing, selling, distributing, or otherwise using motor gasoline to be sold in California. In the

² Sources for the underlying data include the Energy Information Administration, U.S. Department of Energy, U.S. Crude Oil, Natural Gas, and Liquids Table 2003 Annual Report, Table B5, available at <http://www.eia.doe.gov>, the FTC Bureau of Economics Staff Study, "The Petroleum Industry: Mergers, Structural Change, and Antitrust Enforcement," August 2004, Table 5-3, available at <http://www.ftc.gov/os/2004/08/040813/mergersinpetrolberpt.pdf>, and the Oil and Gas Journal.

settlement announced today, Unocal and Chevron have agreed to all of this requested relief.

The consent orders also resolve any possible antitrust objections to the merger. Although Unocal does not engage in any refining or retailing itself, it had claimed the right to collect patent royalties from companies that did so (including Chevron). If Chevron had unconditionally inherited these patents by acquisition, it would have been in a position to obtain sensitive information and to claim royalties from its own horizontal downstream competitors. We have reason to believe that this scenario would likely have an adverse effect on competition and, in any event, would inevitably have required an extensive inquiry and possible litigation.

For example, Union Oil regularly collects detailed reports from licensees about their production of CARB gasoline and other refinery operations. If Chevron had continued these license agreements after inheriting Union Oil's patents, it would have received information not otherwise available to members of the industry. Chevron could have used this information to facilitate coordinated interaction and detect any deviations. Chevron might also have been able to use the patents to discourage maverick behavior. Our present knowledge suggests that the likely competitive harm from this potential coordination and discipline would outweigh any likely efficiency gains from the vertical integration of a merged Chevron-Unocal. Now, a further inquiry into that belief is not necessary.

The settlement of these two matters is thus a double victory for California consumers. The Commission's monopolization case against Unocal was complex and, with possible appeals, could have taken years to resolve. The stakes were high, and substantial royalties could have been paid in the meantime—with an immediate impact on consumers. If the Commission lost the case, the dollar costs to consumers ultimately would have been immense. At the same time, a challenge against the acquisition of Unocal by Chevron would itself be a complex case, with high stakes and an uncertain outcome. The settlement provides the full relief sought in the monopolization case and resolves the only competitive issue with the proposed merger. With the settlement, consumers will benefit immediately from the elimination of royalty payments on the Union Oil patents, and potential merger efficiencies could result in additional savings at the pump.

By direction of the Commission, Chairman Majoras recused.

Donald S. Clark,

Secretary.

[FR Doc. 05–12044 Filed 6–17–05; 8:45 am]

BILLING CODE 6750–01–P

FEDERAL TRADE COMMISSION

[File No. 042 3154]

Tropicana Products, Inc.; Analysis of Agreement Containing Consent Order To Aid Public Comment

AGENCY: Federal Trade Commission.

ACTION: Proposed consent agreement.

SUMMARY: The consent agreement in this matter settles alleged violations of federal law prohibiting unfair or deceptive acts or practices or unfair methods of competition. The attached Analysis to Aid Public Comment describes both the allegations in the draft complaint and the terms of the consent order—embodied in the consent agreement—that would settle these allegations.

DATES: Comments must be received on or before July 1, 2005.

ADDRESSES: Interested parties are invited to submit written comments. Comments should refer to “Tropicana Products, Inc., File No. 042 3154,” to facilitate the organization of comments. A comment filed in paper form should include this reference both in the text and on the envelope, and should be mailed or delivered to the following address: Federal Trade Commission/Office of the Secretary, Room 159–H, 600 Pennsylvania Avenue, NW., Washington, DC 20580. Comments containing confidential material must be filed in paper form, must be clearly labeled “Confidential,” and must comply with Commission Rule 4.9(c). 16 CFR 4.9(c) (2005).¹ The FTC is requesting that any comment filed in paper form be sent by courier or overnight service, if possible, because U.S. postal mail in the Washington area and at the Commission is subject to delay due to heightened security precautions. Comments that do not contain any nonpublic information may instead be filed in electronic form as part of or as an attachment to e-mail

¹ The comment must be accompanied by an explicit request for confidential treatment, including the factual and legal basis for the request, and must identify the specific portions of the comment to be withheld from the public record. The request will be granted or denied by the Commission's General Counsel, consistent with applicable law and the public interest. See Commission Rule 4.9(c), 16 CFR 4.9(c).

messages directed to the following e-mail box: consentagreement@ftc.gov.

The FTC Act and other laws the Commission administers permit the collection of public comments to consider and use in this proceeding as appropriate. All timely and responsive public comments, whether filed in paper or electronic form, will be considered by the Commission, and will be available to the public on the FTC Web site, to the extent practicable, at <http://www.ftc.gov>. As a matter of discretion, the FTC makes every effort to remove home contact information for individuals from the public comments it receives before placing those comments on the FTC Web site. More information, including routine uses permitted by the Privacy Act, may be found in the FTC's privacy policy, at <http://www.ftc.gov/ftc/privacy.htm>.

FOR FURTHER INFORMATION CONTACT:

Michelle Rusk, (202) 326–3148, or Karen Muoio, (202) 326–2491, Bureau of Consumer Protection, 600 Pennsylvania Avenue, NW., Washington, DC 20580.

SUPPLEMENTARY INFORMATION: Pursuant to section 6(f) of the Federal Trade Commission Act, 38 Stat. 721, 15 U.S.C. 46(f), and § 2.34 of the Commission Rules of Practice, 16 CFR 2.34, notice is hereby given that the above-captioned consent agreement containing a consent order to cease and desist, having been filed with and accepted, subject to final approval, by the Commission, has been placed on the public record for a period of thirty (30) days. The following Analysis to Aid Public Comment describes the terms of the consent agreement, and the allegations in the complaint. An electronic copy of the full text of the consent agreement package can be obtained from the FTC Home Page (for June 2, 2005), on the World Wide Web, at <http://www.ftc.gov/os/2005/06/index.htm>. A paper copy can be obtained from the FTC Public Reference Room, Room 130–H, 600 Pennsylvania Avenue, NW., Washington, DC 20580, either in person or by calling (202) 326–2222.

Public comments are invited, and may be filed with the Commission in either paper or electronic form. All comments should be filed as prescribed in the **ADDRESSES** section above, and must be received on or before the date specified in the **DATES** section.

Analysis of Agreement Containing Consent Order To Aid Public Comment

The Federal Trade Commission has accepted, subject to final approval, an agreement containing a consent order from Tropicana Products, Inc.

The proposed consent order has been placed on the public record for thirty

(30) days for receipt of comments by interested persons. Comments received during this period will become part of the public record. After thirty (30) days, the Commission will again review the agreement and the comments received, and will decide whether it should withdraw from the agreement or make final the agreement's proposed order.

This matter involves the advertising and promotion of Tropicana's "Healthy Heart" orange juice. According to the FTC complaint, Tropicana represented that (1) drinking three glasses of "Healthy Heart" a day for one month will raise good cholesterol by twenty-one percent and improve the ratio of good to bad cholesterol by sixteen percent; (2) drinking twenty ounces of "Healthy Heart" a day for one month will increase blood folate levels by forty-five percent and decrease homocysteine levels by eleven percent; and (3) drinking two glasses of orange juice a day for eight weeks will lower blood pressure an average of ten points. The complaint alleges that these claims are unsubstantiated. Tropicana also represented that the above three claims were clinically proven. The complaint alleges that this claim is false. Although Tropicana refers to three studies in its advertising, the studies are limited and do not support the claims made. The proposed consent order contains provisions designed to prevent Tropicana from engaging in similar acts and practices in the future.

Part I of the order requires Tropicana to possess competent and reliable scientific evidence before making the three challenged efficacy claims.

Part II requires Tropicana to possess competent and reliable scientific evidence before making certain representations that any food will affect: any biological marker or health-related endpoint by any specific amount; blood cholesterol levels, blood folate levels, blood homocysteine levels, or blood pressure; or the risk of developing heart disease, stroke, or cancer. Furthermore, Part II provides that a mere statement that a product contains a particular nutrient will not, by itself, be considered to be a health benefit claim covered by Part II.

Part III of the proposed order prohibits Tropicana from misrepresenting the existence, contents, validity, results, conclusions, or interpretations of any test or study.

Part IV permits any representation for any product that is permitted in labeling for such product pursuant to regulations promulgated by FDA pursuant to the Nutrition Labeling and Education Act of 1990.

Parts V through VIII of the order require Tropicana to keep copies of relevant advertisements and materials substantiating claims made in the advertisements; to provide copies of the order to certain of its current and future personnel for three years; to notify the Commission of changes in corporate structure; and to file compliance reports with the Commission. Part IX provides that the order will terminate after twenty (20) years under certain circumstances.

The purpose of this analysis is to facilitate public comment on the proposed order, and it is not intended to constitute an official interpretation of the agreement and proposed order or to modify in any way their terms.

By direction of the Commission.

Donald S. Clark,

Secretary.

[FR Doc. 05-12042 Filed 6-17-05; 8:45 am]

BILLING CODE 6750-01-P

FEDERAL TRADE COMMISSION

[Docket No. 9305]

Union Oil Company of California; Analysis of Proposed Consent Order to Aid Public Comment

AGENCY: Federal Trade Commission.

ACTION: Proposed Consent Agreement.

SUMMARY: The consent agreement in this matter settles alleged violations of federal law prohibiting unfair or deceptive acts or practices or unfair methods of competition. The attached Analysis to Aid Public Comment describes both the allegations in the complaint and the terms of the consent order—embodied in the consent agreement—that would settle these allegations.

DATES: Comments must be received on or before July 9, 2005.

ADDRESSES: Interested parties are invited to submit written comments. Comments should refer to "Union Oil Company of California, Docket No. 9305," to facilitate the organization of comments. A comment filed in paper form should include this reference both in the text and on the envelope, and should be mailed or delivered to the following address: Federal Trade Commission/Office of the Secretary, Room 159-H, 600 Pennsylvania Avenue, NW., Washington, D.C. 20580. Comments containing confidential material must be filed in paper form, must be clearly labeled "Confidential," and must comply with Commission

Rule 4.9(c). 16 CFR 4.9(c) (2005).¹ The FTC is requesting that any comment filed in paper form be sent by courier or overnight service, if possible, because U.S. postal mail in the Washington area and at the Commission is subject to delay due to heightened security precautions. Comments that do not contain any nonpublic information may instead be filed in electronic form as part of or as an attachment to email messages directed to the following email box: consentagreement@ftc.gov.

The FTC Act and other laws the Commission administers permit the collection of public comments to consider and use in this proceeding as appropriate. All timely and responsive public comments, whether filed in paper or electronic form, will be considered by the Commission, and will be available to the public on the FTC Web site, to the extent practicable, at www.ftc.gov. As a matter of discretion, the FTC makes every effort to remove home contact information for individuals from the public comments it receives before placing those comments on the FTC website. More information, including routine uses permitted by the Privacy Act, may be found in the FTC's privacy policy, at <http://www.ftc.gov/ftc/privacy.htm>.

FOR FURTHER INFORMATION CONTACT:

Chong S. Park, Bureau of Competition, 600 Pennsylvania Avenue, NW, Washington, D.C. 20580, (202) 326-2372.

SUPPLEMENTARY INFORMATION: Pursuant to section 6(f) of the Federal Trade Commission Act, 38 Stat. 721, 15 U.S.C. 46(f), and § 3.25(f) of the Commission Rules of Practice, 16 CFR 3.25(f), notice is hereby given that the above-captioned consent agreement containing a consent order to cease and desist, having been filed with and accepted, subject to final approval, by the Commission, has been placed on the public record for a period of thirty (30) days. The following Analysis to Aid Public Comment describes the terms of the consent agreement, and the allegations in the complaint. An electronic copy of the full text of the consent agreement package can be obtained from the FTC Home Page (for June 10, 2005), on the World Wide Web, at <http://www.ftc.gov/os/2005/06/index.htm>. A paper copy can be obtained from the FTC Public

¹ The comment must be accompanied by an explicit request for confidential treatment, including the factual and legal basis for the request, and must identify the specific portions of the comment to be withheld from the public record. The request will be granted or denied by the Commission's General Counsel, consistent with applicable law and the public interest. See Commission Rule 4.9(c), 16 CFR 4.9(c).

Reference Room, Room 130–H, 600 Pennsylvania Avenue, NW., Washington, DC 20580, either in person or by calling (202) 326–2222.

Public comments are invited, and may be filed with the Commission in either paper or electronic form. All comments should be filed as prescribed in the **ADDRESSES** section above, and must be received on or before the date specified in the **DATES** section.

Analysis of Agreement Containing Consent Order to Aid Public Comment

The Federal Trade Commission has accepted for public comment an Agreement Containing Consent Order (“Agreement”) with Union Oil Company of California (“Union Oil”) to resolve matters charged in an Administrative Complaint issued by the Commission on March 4, 2003 (“Complaint”). Pursuant to the Agreement, Union Oil provisionally has agreed to be bound by a proposed consent order (“Proposed Consent Order”).

The Agreement has been placed on the public record for thirty (30) days for receipt of comments from interested members of the public. The Agreement is for settlement purposes only and does not constitute an admission by Union Oil that the law has been violated as alleged in the Complaint or that the facts alleged in the Complaint, other than jurisdictional facts, are true. The Proposed Consent Order remedies alleged anticompetitive effects arising from Union Oil’s conduct, as alleged in the Complaint.

I. The Commission’s Complaint

The Complaint alleges that Respondent Union Oil engaged in a series of acts to subvert state regulatory standard-setting procedures relating to low emissions gasoline. To address California’s serious air pollution problems, the California Air Resources Board (“CARB”) initiated proceedings in the late 1980s to set regulations and standards governing the composition of low emissions, reformulated gasoline (“RFG”). The Complaint alleges that Union Oil actively participated in CARB RFG rulemaking proceedings and engaged in a pattern of bad-faith, deceptive conduct, exclusionary in nature, that enabled it to undermine competition and harm consumers. The Complaint states that Union Oil also engaged in deceptive and exclusionary conduct through its participation in two private industry groups—the Auto/Oil Air Quality Improvement Program (“Auto/Oil”) and the Western States Petroleum Association (“WSPA”). According to the Complaint, Union Oil

thereby illegally monopolized, attempted to monopolize, and otherwise engaged in unfair methods of competition in violation of Section 5 of the FTC Act in both the technology market for the production and supply of CARB-compliant “summer-time” gasoline, and the downstream “summer-time” gasoline product market.

Union Oil is a public corporation, organized in, and doing business under, the laws of California. Union Oil is a wholly-owned operating subsidiary of Unocal Corporation, a holding company incorporated in Delaware. Prior to 1997, Union Oil owned and operated refineries in California as a vertically-integrated producer, refiner, and marketer of petroleum products. In 1997, Union Oil sold its west coast refining, marketing, and transportation assets. Currently, Union Oil’s primary business activities involve oil and gas exploration and production.

The Complaint alleges that during the CARB “Phase 2” RFG rulemaking proceedings in 1990–1994, Union Oil made a series of materially false and misleading statements. According to the allegations in the Complaint, Union Oil willfully and intentionally:

a. Represented to CARB and other participants that Union Oil’s emissions research results showing, *inter alia*, the relationships between certain gasoline properties and automobile emissions, were “nonproprietary,” in “the public domain,” or otherwise were available to CARB, industry members, and the general public—without disclosing that Union Oil intended to assert its proprietary interests (as manifested in pending patent claims) in the results of this research;

b. Represented to CARB that a “predictive model”—i.e., a mathematical model that predicts whether the emissions that would result from varying certain gasoline properties in a fuel are equivalent to the emissions resulting from a specified and fixed fuel formulation—would be “cost-effective” and “flexible,” without disclosing that Union Oil’s assertion of its proprietary interests would undermine the cost-effectiveness and flexibility of such a model; and

c. Made statements and comments to CARB and other industry participants relating to the cost-effectiveness and flexibility of the regulations that further reinforced the materially false and misleading impression that Union Oil had relinquished or would not enforce any proprietary interests in its emissions research results.

According to the Complaint, Union Oil continued to conceal its intention to obtain a competitive advantage through

the enforcement of its proprietary interests relating to RFG even after Union Oil received notice that the pending patent claims were allowed and issued. The Complaint alleges that Union Oil thereby led CARB and two private industry groups—Auto/Oil and WSPA (and their respective industry members)—to believe that Union Oil did not have, or would not enforce, any proprietary interests or intellectual property rights associated with its emissions research results.

The Complaint alleges that Union Oil’s conduct caused CARB to adopt Phase 2 “summer-time” RFG regulations that substantially overlapped with Union Oil’s concealed pending patent claims. But for Union Oil’s deception, according to the Complaint, CARB would not have adopted RFG regulations substantially incorporating Union Oil’s proprietary interests; the terms on which Union Oil was later able to enforce its proprietary interests would have been substantially different; or both.

The Complaint alleges that but for Union Oil’s deceptive conduct, industry participants in Auto/Oil and WSPA would have taken actions including, but not limited to, (a) advocating that CARB adopt regulations that minimized or avoided infringement of Union Oil’s patent claims; (b) advocating that CARB negotiate license terms substantially different from those that Union Oil was later able to obtain; and/or (c) incorporating knowledge of Union Oil’s pending patent rights in their capital investment and refinery reconfiguration decisions to avoid and/or minimize potential infringement.

According to the Complaint, Union Oil did not announce the existence of its proprietary interests and patent rights relating to RFG until January 1995—shortly before the relevant CARB Phase 2 RFG regulations were to go into effect. The Complaint alleges that, by that time, the refining industry had spent billions of dollars in capital expenditures to modify their refineries to comply with the CARB Phase 2 RFG regulations, in reliance on Union Oil’s representations that its research results were in “the public domain.” The Complaint states that once CARB and the refiners had become locked into the Phase 2 regulations, Union Oil commenced vigorous enforcement of its patent rights through litigation and licensing, and obtained four additional patents based on the same RFG research results.

Union Oil’s misrepresentations, according to the Complaint, have harmed competition and led directly to the acquisition of monopoly power for the technology to produce and supply

California "summer-time" reformulated gasoline (mandated for up to eight months of the year, from approximately March through October). The Complaint alleges that Union Oil's conduct also permitted it to undermine competition and harm consumers in the downstream product market for "summer-time" reformulated gasoline in California. The Complaint alleges that without recourse, Union Oil's conduct would continue materially to cause or threaten to cause further substantial injury to competition and to consumers.

According to the Complaint, Union Oil's enforcement of its RFG patents has resulted, *inter alia*, in a jury determination of a 5.75 cents per gallon royalty on gasoline produced by major California refiners comprising approximately 90 percent of the current refining capacity of CARB-compliant RFG in the California market. The Complaint alleges that Union Oil also has publicly announced that it will license its RFG patent portfolio, with fees ranging from 1.2 to 3.4 cents per gallon, to "non-litigating" refiners.

The Complaint alleges that Unocal's conduct could result in an estimated annual cost of more than \$500 million to the refining industry. According to the Complaint, Union Oil's own economic expert has testified under oath that 90 percent of any royalty would be passed through to consumers in the form of higher gasoline prices.

II. Terms of the Proposed Consent Order

The Commission has provisionally entered into an Agreement with Union Oil in settlement of the Complaint. As discussed below, the provisions of the Agreement are conditioned upon the completion of certain steps in Chevron Corporation's merger with Unocal Corporation, as contemplated by the Agreement and Plan of Merger dated as of April 4, 2005, among Unocal Corporation, ChevronTexaco Corporation, and Blue Merger Sub Inc.

In order to remedy the alleged anticompetitive effects, Union Oil has agreed to take several actions. First, it will cease and desist from any and all efforts, and will not undertake any new efforts to: (a) Assert or enforce any of Union Oil's Relevant U.S. Patents against any person; (b) recover any damages or costs for alleged infringements of any of the Relevant U.S. Patents; or (c) collect any fees, royalties or other payments, in cash or in kind, for the practice of any of the Relevant U.S. Patents, including but not limited to fees, royalties, or other payments, in cash or in kind, to be collected pursuant to any License

Agreement. These obligations become effective as of the "Merger Effective Date," which is defined as the earlier of (1) the date that the certificate of merger for the Merger is filed with the Secretary of State of Delaware or such later time as specified in such certificate of merger, or (2) the date that Chevron Corporation acquires control of Unocal Corporation, as "control" is defined by 16 CFR 801.1(b).

Second, the Proposed Consent Order requires that, within thirty (30) days following the Merger Effective Date, Union Oil shall file, or cause to be filed, with the United States Patent and Trademark Office, the necessary documents pursuant to 35 U.S.C. 253, 37 CFR 1.321, and the Manual of Patent Examining Procedure to disclaim or dedicate to the public the remaining term of the Relevant U.S. Patents. The Proposed Consent Order further requires that Union Oil shall correct as necessary, and shall not withdraw or seek to nullify, any disclaimers or dedications filed pursuant to the Proposed Consent Order.

Third, the Proposed Consent Order requires that, within thirty (30) days following the Merger Effective Date, Union Oil shall move to dismiss, with prejudice, all pending legal actions relating to the alleged infringement of any Relevant U.S. Patents, including but not limited to the following actions pending in the United States District Court for the Central District of California: *Union Oil Company of California v. Atlantic Richfield Company, et al.*, Case No. CV-95-2379-CAS and *Union Oil Company of California v. Valero Energy Corporation*, Case No. CV-02-00593 SVW.

Paragraph V of the Proposed Consent Order requires Union Oil to distribute a copy of the Proposed Consent Order and the Complaint in this matter to certain interested parties, including (1) any person that Union Oil has contacted regarding possible infringement of any of the Relevant U.S. Patents, (2) any person against which Union Oil is, or was, involved in any legal action regarding possible infringement of any of the Relevant U.S. Patents, (3) any licensee or other Person from which Union Oil has collected any fees, royalties or other payments, in cash or in kind, for the practice of the Relevant U.S. Patents, and (4) any person that Union Oil has contacted with regard to the possible collection of any fees, royalties or other payments, in cash or in kind, for the practice of the Relevant U.S. Patents.

Paragraph V also requires Union Oil to distribute a copy of the Proposed Consent Order and the Complaint to

Union Oil's present and future officers and directors having responsibility for any of its obligations under the Proposed Consent Order, and to employees and agents having managerial responsibility for any of its obligations under the Proposed Consent Order.

Paragraphs VI, VII and VIII of the Proposed Consent Order contain standard reporting, access, and notification provisions designed to allow the Commission to monitor compliance with the order. Paragraph IX provides that the Proposed Consent Order shall terminate twenty (20) years after the date it becomes final.

III. Opportunity for Public Comment

The Proposed Consent Order has been placed on the public record for thirty (30) days for receipt of comments by interested persons. Comments received during this thirty-day comment period will become part of the public record. After thirty (30) days, the Commission will again review the Proposed Consent Order and the comments received and will decide whether it should withdraw from the Proposed Consent Order or make final the Agreement's Proposed Consent Order.

By accepting the Proposed Consent Order subject to final approval, the Commission anticipates that the competitive problems alleged in the Complaint will be resolved. The purpose of this analysis is to invite public comment on the Proposed Consent Order, and to aid the Commission in its determination of whether it should make final the Proposed Consent Order contained in the Agreement. This analysis is not intended to constitute an official interpretation of the Proposed Consent Order, nor is it intended to modify the terms of the Proposed Consent Order in any way.

Statement of the Federal Trade Commission

The Federal Trade Commission has voted unanimously (4-0-1, with Chairman Majoras recused) to accept two linked consent agreements that resolve both the Commission's monopolization case against Unocal Corporation's subsidiary Union Oil Company of California and any antitrust concerns arising from Chevron Corporation's pending acquisition of Unocal. The key element in the settlements, which will become effective when the acquisition is completed, is Chevron's agreement not to enforce certain Union Oil patents that potentially could have increased gasoline prices in California by over

\$500 million a year (or almost six cents per gallon). This agreement provides the full relief that the Commission sought in its administrative litigation with Union Oil and also addresses the only possible objection to the Chevron/Unocal acquisition.

On April 4, 2005, Chevron agreed to acquire Unocal in a transaction valued at approximately \$18 billion. Chevron and Unocal both have extensive oil and gas operations. However, nearly all of Unocal's operations are in the so-called "upstream" segment of the business—namely, the exploration and production of crude oil and natural gas. Unocal has no refineries or gasoline stations in the United States or anywhere else in the world, and has few other "downstream" operations. As a result, virtually all of the competitive overlaps between the two firms are in unconcentrated upstream markets, and the merger thus creates no competitive risk. For example, Chevron and Unocal combined have only 2.7 percent of world crude oil production, 0.77 percent of world crude oil reserves, 11.3 percent of U.S. crude oil production, and 11.4 percent of U.S. crude oil reserves.² *We want to emphasize that the merger will have no impact whatsoever on concentration at the retail or refinery levels.* It is clear from all we have seen that Chevron's primary motivation is to gain access to Unocal's upstream oil reserves.

The only potential competitive concern with Chevron's proposed acquisition of Unocal involved patents held by Union Oil—the same group of patents involved in the Commission's monopolization case against Union Oil. In order to explain why this is so, it is necessary first to discuss the issues in this monopolization case.

The Commission's administrative complaint against Union Oil charged that the firm had illegally acquired monopoly power in the technology market for producing certain low-emission gasoline mandated by the California Air Resources Board (CARB) for sale and use in California for up to eight months of the year. According to the complaint, Union Oil misrepresented to CARB that certain gasoline research was non-proprietary and in the public domain, while at the

same time it pursued a patent that would enable it to charge substantial royalties if the research results were used by CARB in the development of regulations. The complaint further asserted that Union Oil similarly misled its fellow members of private industry groups, which were also participating in the CARB rulemaking process. As a result, if Union Oil were permitted to enforce its patent rights, companies producing this low-emission CARB gasoline would be required to pay royalties to Union Oil, the bulk of which would be passed on to California consumers in the form of higher gasoline prices. The Commission estimated that Union Oil's enforcement of these patents could potentially result in over \$500 million of additional consumer costs each year. The complaint sought an order requiring Union Oil to cease and desist from all efforts to assert these patents against those manufacturing, selling, distributing, or otherwise using motor gasoline to be sold in California. In the settlement announced today, Unocal and Chevron have agreed to all of this requested relief.

The consent orders also resolve any possible antitrust objections to the merger. Although Unocal does not engage in any refining or retailing itself, it had claimed the right to collect patent royalties from companies that did so (including Chevron). If Chevron had unconditionally inherited these patents by acquisition, it would have been in a position to obtain sensitive information and to claim royalties from its own horizontal downstream competitors. We have reason to believe that this scenario would likely have an adverse effect on competition and, in any event, would inevitably have required an extensive inquiry and possible litigation.

For example, Union Oil regularly collects detailed reports from licensees about their production of CARB gasoline and other refinery operations. If Chevron had continued these license agreements after inheriting Union Oil's patents, it would have received information not otherwise available to members of the industry. Chevron could have used this information to facilitate coordinated interaction and detect any deviations. Chevron might also have been able to use the patents to discourage maverick behavior. Our present knowledge suggests that the likely competitive harm from this potential coordination and discipline would outweigh any likely efficiency gains from the vertical integration of a merged Chevron-Unocal. Now, a further inquiry into that belief is not necessary.

The settlement of these two matters is thus a double victory for California consumers. The Commission's monopolization case against Unocal was complex and, with possible appeals, could have taken years to resolve. The stakes were high, and substantial royalties could have been paid in the meantime—with an immediate impact on consumers. If the Commission lost the case, the dollar costs to consumers ultimately would have been immense. At the same time, a challenge against the acquisition of Unocal by Chevron would itself be a complex case, with high stakes and an uncertain outcome. The settlement provides the full relief sought in the monopolization case and resolves the only competitive issue with the proposed merger. With the settlement, consumers will benefit immediately from the elimination of royalty payments on the Union Oil patents, and potential merger efficiencies could result in additional savings at the pump.

By direction of the Commission, Chairman Majoras recused.

Donald S. Clark,

Secretary.

[FR Doc. 05–12043 Filed 6–17–05; 8:45 am]

BILLING CODE 6750–01–P

DEPARTMENT OF HEALTH AND HUMAN SERVICES

Office of the Secretary

Area Poverty Research Centers; Office of the Assistant Secretary for Planning and Evaluation (ASPE)—Area Poverty Research Centers

Announcement Type: Grant—Initial.

CFDA Number: 93.239.

Due Date for Letter of Intent: July 11, 2005.

Due Date for Applications: August 4, 2005.

Executive Summary: Funds are provided for Area Poverty Research Center cooperative agreements for qualified institutions to provide a focused agenda expanding our understanding of the causes, consequences and effects of poverty in local geographic areas or specific substantive areas, especially in states or regional areas of high concentrations of poverty. These cooperative agreements are intended to create a research opportunity for scholars and institutions otherwise unlikely to participate extensively in HHS programs to support the Nation's poverty research effort.

² Sources for the underlying data include the Energy Information Administration, U.S. Department of Energy, U.S. Crude Oil, Natural Gas, and Liquids Table 2003 Annual Report, Table B5, available at <http://www.eia.doe.gov>, the FTC Bureau of Economics Staff Study, "The Petroleum Industry: Mergers, Structural Change, and Antitrust Enforcement," August 2004, Table 5–3, available at <http://www.ftc.gov/os/2004/08/040813/mergersinpetrolberpt.pdf>, and the Oil and Gas Journal.

I. Funding Opportunity Description

A. Purpose

The purpose of this announcement is to report the availability of funds to support cooperative agreements for area poverty research centers. HHS has had a long history supporting research and evaluation of important and emerging social policy issues associated with the nature, causes, correlates, and effects of income dynamics, poverty, individual and family functioning and child well-being. ASPE supports a national poverty center at the University of Michigan. The national poverty center conducts a broad program of policy research and mentoring of emerging scholars to describe and analyze national, regional and state environment (e.g., economics, demographics) and policies affecting the poor, particularly those families with children who are poor or at-risk of being poor. ASPE also supports three area poverty centers which focus on issues of regional or state interest. They are housed at the University of Wisconsin at Madison, the University of Kentucky, and the University of Missouri.

These awards (cooperative agreements) replace the current cooperative agreements with the Institute for Research on Poverty (IRP) at the University of Wisconsin, the Rural Poverty Research Center at the University of Missouri and the Center for Poverty Research at the University of Kentucky. Central to the mission of the area poverty research centers is capacity building—supporting faculty research and faculty training; enhancing campus-wide awareness of issues related to poverty; and supporting and mentoring students in poverty and low-income policy related careers. Work of the current poverty centers includes: (1) Expanding the knowledge of the causes and consequences of poverty as well as responses to ameliorate poverty and its impacts on Americans, (2) providing a core of multi-disciplinary researchers, as well as a network of scholars who focus their research on poverty and the poor, (3) developing and training of future social science researchers whose work focuses on poverty and the poor, (4) continuation of the work on the improvement of methods and data to permit a fuller understanding of the causes and consequences of poverty and the social policies and programs meant to alleviate it, and (5) maintaining a network for the dissemination of findings to the policy and research communities through newsletters, working papers, special reports and briefings. Information on the current centers is available on their respective Web sites: <http://www.ssc.wisc.edu/irp>,

<http://www.rprconline.org>, and <http://www.ukcpr.org/Index1.html>. We expect the centers funded under this announcement to provide leadership through innovative applied research, evaluation, and mentoring to increase the number and diversity of poverty scholars and heighten awareness of poverty-related issues for all students by bringing relevant content into the classroom. The winning applicant(s) will be expected to carry out a program that continues a strong scholarly tradition and concern for poverty. There are no specific projects that must be continued from the current Centers under this award.

B. Statutory Authority

Section 1110 of the Social Security Act (42 U.S.C. 1310) and awards will be made from funds appropriated under Public Law 108-447.

C. Background

The U.S. continues to experience social changes relating to the economy, demographics, social and behavioral functioning of individuals, families and the well-being of children. The manner by which government and others react to or precipitates these changes also is in a state of evolution. In order to inform the public about these social trends and their causes, consequences, and cures, HHS is soliciting applications for cooperative agreements to university-based institutions. The Assistant Secretary for Planning and Evaluation (ASPE) expects to fund the Area Poverty Research Centers for a period of three (3) years. The first year of funding for an Area Poverty Research Center will be approximately a maximum of \$500,000 (combined direct and indirect funding). Subject to the availability of future funds we expect total funding of no more than \$1.5 million over the three year period for each center.

Cooperative Agreements are assistance mechanisms and subject to the same administrative requirements as grants. However, they are different from either a grant or a contract. Compared to a grant, they allow more involvement and collaboration by the government in the affairs of the project, but provide less direction of project activities than a contract. The Terms of Award are in addition to, not in lieu of, otherwise applicable guidelines and procedures.

ASPE plans to fund up to three Area Poverty Research Centers. The Area Poverty Research Center cooperative agreements are for qualified institutions to provide a focused agenda expanding our understanding of the causes, consequences and effects of poverty in

local geographic areas or specific substantive areas, especially in states or regional areas of high concentrations of poverty. These cooperative agreements are intended to create a research opportunity for scholars and institutions otherwise unlikely to participate extensively in HHS programs to support the Nation's poverty research effort. It is anticipated that investigators supported under the Area Poverty Research Centers will benefit from the opportunity to conduct independent research; that the grantee institutions will benefit from participation in the diverse extramural programs of HHS; and that students will benefit from exposure to and participation in research and be encouraged to pursue graduate studies and careers in the social and behavioral sciences with a focus on poverty.

II. Award Information

Funding Instrument Type:

Cooperative Agreements.

Anticipated Total Funding:

\$1,200,000.

Anticipated Number of Awards: 3–4.

Ceiling on Amount of Individual

Awards: \$5000,000 per budget period.

Length of Project Periods: 35 month project with three 12 month budget periods.

Applications for renewal or supplementation of existing projects are eligible to compete with applications for new awards.

Responsibilities of the Awardee and the Federal Government in the Establishment and Operation of Area Poverty Research Centers

A. Awardee Responsibilities for Area Poverty Research Centers

The purpose of the Area Poverty Research Centers is to support interdisciplinary research leading to an understanding and reduction of poverty, income inequality and its correlates. Central to the mission of the area poverty research centers is capacity building—supporting faculty research and faculty training; enhancing campus-wide awareness of issues related to poverty; and supporting and mentoring students in poverty and low-income policy related careers. Applicants are invited to propose multi-level, integrated research projects that will shed light on the complex interactions of the social and physical environment, and mediating behavioral factors, which determine poverty and income inequality. Area Poverty Research Centers are expected to create an environment conducive to interdisciplinary collaborations among

social and behavioral scientist and affected communities with the goal of improving well-being of individuals, families and children. The successful applicant(s) shall develop and conduct a program which appropriately balances research, mentoring young scholars, and dissemination activities directed to understanding the well-being of individuals, families and children. Although not required, applicants are encouraged to take advantage of defined geographic areas of study and existing data.

ASPE has identified five priority areas the applicant may address: (1) Strategies to encourage work, self-reliance, parent responsibility, community, and child well-being, (2) The changing labor market and its influence on low-income families with children, (3) Non-marital child-bearing, teen pregnancy, and healthy marriage, (4) Youth transition to adulthood, and (5) State- and local-level policy, programs and interventions, particularly those targeted to geographic concentrations of poverty, to enhance self-sufficiency and well-being. Applications may address all, some, or none of these. If applications do not address any of these priority areas, they must address other important aspects of poverty.

The awardees will perform the following specific tasks:

1. Research Program

Each Area Poverty Research Center will be expected to plan, initiate and maintain a research program of high caliber. It may include small-scale, new or ongoing social, behavioral, policy-related research projects, including pilot research projects and feasibility studies; development, testing, and refinement of research techniques; secondary analysis of available data sets; or similar research projects. Each Center will be expected to carry out or support at least two projects, as well as develop or expand the Center's presence on campus and in the broader research community and involve students in the ongoing research of the center.

2. Mentoring Young Scholars

Each Area Poverty Research Center is expected to develop and expand a diverse corps of young scholars/researchers who focus career goals on policy, research and programs focused on poverty populations. The Area Poverty Research Centers will be expected to develop an awareness and interest in students of the opportunities in poverty research through such activities as research internships, seminars and related experiences. Applicants should demonstrate how

students will benefit from exposure to and participation in the ongoing research of Area Poverty Research Center faculty and staff and be encouraged to pursue graduate studies in the social and behavioral sciences with a focus on poverty related studies.

3. Dissemination

Making knowledge and information available to interested parties is to be another integral feature of each Area Poverty Research Center's responsibilities. The Centers will be expected to develop and maintain a dissemination system. Applicants are encouraged to propose use of innovative methods of disseminating data and information. Applications should show a sensitivity to the different dissemination strategies which may be appropriate for different audiences—such as policy makers, practitioners, and academics.

B. ASPE Responsibilities

ASPE will be involved with each Center in jointly establishing broad research priorities and planning strategies to accomplish the objectives of this announcement. ASPE, or its representatives, will provide the following types of support to the Centers: (1) Consultation and technical assistance in planning, operating, and evaluating the Center's program of research, mentoring and dissemination activities, (2) information about HHS programs, policies, and research priorities, (3) assistance in collaborating with appropriate federal, state and local government officials in the performance of program activities, (4) assistance in identifying HHS information and technical assistance resources pertinent to the Center's success, (5) assistance in the transfer of information to appropriate federal, state, and local entities, (6) review of Center activities and feedback to ensure that objectives and award conditions are being met, (7) coordination of activities amongst the centers to ensure, to the extent possible, the optimal use of resources and expertise. ASPE retains the right, however, to withhold annual renewals to the awardee, if technical performance requirements are not met.

C. Joint Responsibilities

Each awardee, jointly with ASPE, will appoint an outside advisory committee, funded under this agreement. Each committee will be selected to provide assistance to both the national poverty center and each Area Poverty Research Center formulating the research agenda and advice on carrying it out. Efforts will be made in selecting this committee

to assure a broad range of academic disciplines and political viewpoints. For each Center the committee will be composed of approximately four to six nationally and/or regionally recognized scholars and practitioners and will include the director of the national poverty center. (For a list of the current Advisory Committee members for the three Area Poverty Research Centers see their respective websites: www.ss.cwisc.edu/irp, <http://www.rprconline.org>, and <http://www.ukcpr.org/Index1.html>). This committee will meet once a year rotating between Washington, DC and each Area Poverty Research Centers location.

D. Rights to Data

The awardee will retain custody of and have primary rights to the data developed under this award, subject to government rights to access consistent with current HHS regulations. The awardee should make reasonable efforts, however, to provide other research appropriate and speedy access to research data from this project and establish public use files of research data developed under this award.

The Federal share of project costs shall not exceed \$500,000 for the first 12-month budget period inclusive of indirect costs and shall not exceed \$500,000 per year for the second through third 12-month budget periods. An application that exceeds the upper value dollar range specified will be considered "non-responsive" and be returned to the applicant without further review. The project period will be up to three years. The initial award will be for the first one-year budget period. Requests for a second and/or third year of funding within the project period should be identified in the current applications (on SF-424A), but such requests will be considered in subsequent years on a noncompetitive basis, subject to the applicant eligibility status, the availability of funds, satisfactory progress of the grantee, and a determination that continued funding would be in the best interest of the government.

III. Eligibility Information

1. Eligibility Applicants: Colleges and universities offering baccalaureate or advanced degrees in the social and behavioral sciences. Scholars and researchers working in Area Poverty Research Center eligible institutions located in geographic areas where there are large concentrations of poor are encouraged to participate in this program.

2. **Cost Sharing/Matching:** Awardees must provide at least 5 percent of the total approved cost of the project. The total approved cost of the project is the sum of the federal share and the non-federal share. The non-federal share may be met by cash or in-kind contributions, although applicants are encouraged to meet their matching requirements through cash contributions. For example, an awardee with a project with a total budget (both direct and indirect costs) of \$400,000 may request up to \$380,000 in federal funds. Matching requirements cannot be met with funds from other federally-funded programs. If a proposed project activity has approved funding support from other funding sources, the amount, duration, purpose, and source of the funds should be indicated in materials submitted under this announcement. If completion of the proposed project activity is contingent upon approval of funding from other sources, the relationship between the funds being sought elsewhere and from ASPE should be discussed in the budget information submitted as a part of the abstract. In both cases, the contribution that ASPE funds will make to the project should be clearly presented.

3. **Other:** All applicants must have a Dun & Bradstreet number. On June 27, 2003 the Office of Management and Budget published in the **Federal Register** a new Federal policy applicable to all Federal grant applicants. The policy requires Federal grant applicants to provide a Dun & Bradstreet Data Universal Number System (DUNS) number when applying for Federal grants or cooperative agreements on or after October 1, 2003. A DUNS number will be required for every application for a new award or renewal/continuation of an award, including applications or plans under formula, entitlement and block grant programs, submitted on or after October 1, 2003.

Please ensure that your organization has DUNS number. You may acquire a DUNS number at no cost by calling the dedicated toll-free DUNS number request line on 1-866-705-5711 or you may request a number on-line at <http://www.dnb.com>.

Disqualification Factors: Applications that exceed the ceiling amount will be considered non-responsive and will not be considered for funding under this announcement.

Any application that fails to satisfy the deadline requirements will be considered non-responsive and will not be considered for funding under this announcement.

IV. Application and Submission Information

1. **Address to Request Application Package:** Theresa Jarosik, Grants Management Specialist, National Institute of Allergy and Infectious Diseases, NIH, DEA, DHHS, 6700B Rockledge Drive, Room 2261, Bethesda, MD 20892-7614. For express mail services please use zip code 20817. Additional contact information is as follows: phone: 301-594-7460, fax: 301-480-2599, e-mail: tjarosik@niaid.nih.gov.

Notice of Intent to Submit an Application: If you plan to submit an application, you must notify us by fax or e-mail by July 11, 2005. This information will be used only to determine the number of expert reviewers needed to review the applications. Include only the following information in this fax or e-mail: the title of the announcement; the title of your project; the names, addresses, telephone and fax numbers, e-mail address of the principal investigator and the fiscal agent (if known); and the name of the university. Do not include a description of your proposed project. Send this information to: Audrey Mirsky-Ashby; Fax: 202-690-6562, e-Mail: audrey.mirsky-ashby@hhs.gov.

2. **Content and Format of Application Submission:** Applicants must limit their application to 50 pages (excluding appendices), double spaced, with standard one-inch margins and 12 point fonts (excluding appendices). This page limit applies to narrative text but not the Standard Federal Forms (see list below). Applicants must number the pages of their application beginning with the Table of Contents. All pages of the narrative must be unbound.

In general, ASPE seeks organizations which can demonstrate the ability to provide quality research, training of emerging scholars, and working with Federal, State and local governments. Applicants for funding should reflect, in the program narrative section of the application, how they will be able to fulfill the responsibilities and requirements described in the announcement. Applications should specify in detail how administrative arrangements will be made to minimize start-up and transition delays. It is expected that the applicant will have additional funding and arrangements with other organizations and institutions, including the host institution(s). The applicant should make all current and anticipated related funding arrangements explicit in the application.

The applicant shall address the following:

(1) Analysis of Key Trends and Past Research

The application shall present a brief analysis of the key trends (e.g., social, demographic, economic) and past research related to the Area Poverty Research Center's proposed focus which provides a basis for the proposed Area Poverty Research Center plan to implement a course of study and capacity building. The analysis should examine the nature, causes, and correlates of one or more of the trends as they relate to the Area Poverty Research Center's focus, as appropriate. The analysis should demonstrate the applicant's grasp of the policy and research significance of recent and future social trends as well as the past research.

(2) Research Agenda

Central to each application shall be a prospectus for a three-year research agenda, outlining the major research themes to be investigated over the next three years. In particular, the prospectus will describe the activities planned for each of the research priority issues proposed by the Area Poverty Research Center. The prospectus should discuss the kind of research activities that will provide information in the priority issues selected and the role of the proposed Area Poverty Research Center in carrying out those activities. The prospectus should be based on the analysis of trends and research. The prospectus may include detailed descriptions of the individual research projects that will be expected in the Center's first year of operation; including the conceptual framework, design, data, methods and proposed analyses. The application should detail the proposed methods to engage researchers and emerging scholars in the research program. It also should be specific about the longer-term research themes and projects. The lines of research described in the prospectus should be concrete enough that project descriptions in subsequent research plan amendments can be viewed as articulating a research theme discussed in the prospectus. An application that simply contains an ad hoc categorization of an unstructured set of research projects—as opposed to a set of projects which strike a coherent theme—will be judged unfavorably. Note: Once a successful applicant has been selected ASPE will review the research agenda and jointly determine future research priorities. The research plan will be periodically reviewed and

revised as necessary. The application should discuss a proposed research planning process, including involvement of an outside advisory committee and other advisors, and participation with the National Center and the other Area Poverty Research Centers awarded as part of this action.

(3) Staff and Organizational Plan

The application must include a staffing and organizational proposal for the Area Poverty Research Center, including an analysis of the types of background needed among staff members, the Area Poverty Research Center's organizational structure, and linkages with the host university and other organizations. It is in this third section that the application should specify how it will assure a genuinely interdisciplinary approach to research, and where appropriate, the necessary links to university/college departments or units, other organizations and scholars engaged in research, and government policy making. The applicant shall identify the director (or principal investigator) and key senior research staff. Full resumes of proposed staff members shall be included as a separate appendix to the application. The time commitment to the Area Poverty Research Center and other existing commitments for each proposed staff members shall be clearly indicated in chart form. The kinds of administrative and tenure arrangements, if any, the Area Poverty Research Center proposes to make should also be discussed in this section. In addition, the author(s) of the application and the role which he or she (they) will play in the proposed Area Poverty Research Center must be specified.

If the application envisions an arrangement among two or more colleges, universities or institutions, this section will describe the specifics about the relationships, including leadership, management, and administration. It should pay particular attention to discussing how a focal point for research, teaching, and scholarship will be maintained given the arrangement proposed. The application must describe what steps will be taken to develop or expand the Area Poverty Research Center's presence on campus and in the broader community. The application also should discuss the role, selection procedure, and expected contribution of the external advisory committee.

The application must also include a detailed dissemination plan that describes the process of disseminating findings to interested parties through

newsletters, working papers, special reports and briefings.

(4) Training and Mentoring Emerging Scholars

The proposed should present a training and mentoring plan for emerging scholars, describing how students will benefit from exposure to and participation in the ongoing research of the Area Poverty Research Center faculty and staff and how student will be encouraged to pursue graduate studies in the social and behavioral sciences with a focus on poverty related studies. This section shall discuss any financial arrangement for supporting undergraduate and graduate students, research assistant, post-docs, affiliates, resident scholars, etc. The discussion should include the expected number and types of young scholars to be supported, the level of support anticipated, and methods to ensure diversity.

(5) Budget Narrative

The application's budget summary narrative must link the research, mentoring, and dissemination program to the Area Poverty Research Center funding level. This section should discuss how the three-year budget supports proposed research, training, and dissemination activities and should link the first year funding to a three year plan. The discussion should include the appropriateness of the level and distribution of funds to the successful completion of the research, training, and dissemination plans. Also, the limited amount of funds available for this award may indicate the desirability of using these funds as partial, core support for the proposed Center and applicant are encouraged to seek additional support from other sources. The availability, potential availability or prospects for other funds (from the host university, other universities, foundation, states, other Federal agencies, etc.) and the uses to which they would be put, should be documented in this section. Applications which show funding, or well thought out plans to secure funding, from other sources that supplement funds from this grant will be given higher marks than if they have no additional financial support.

Applicants are advised to include all required forms and materials and to organize these materials according to the format, and in the order, presented below.

- a. Cover letter.
- b. Contact information sheet (see details belows).
- c. Standard Federal forms.

Standard Application for Federal Assistance (form 424).

Budget Information—Non-construction Programs (424A).

Certifications regarding lobbying.

Disclosures of lobbying activities (if necessary).

Certification regarding environmental tobacco smoke.

Assurance Regarding Non-construction Program (form 424B).

Assurance regarding protection of human subjects.

d. Table of Contents.

e. Project abstract (not to exceed one page).

f. Project narrative statement (see details below).

g. Appendices.

Proof of nonprofit status.

Curriculum vitae for principal investigators.

Content of Contact Information Sheet:

The contact information sheet should include complete contact information, including addresses, phone an fax number, and e-mail addresses, for the Principal Investigator(s) and the institution's grant/financial officer (person who signs the SF-424).

3. *Submission Dates and Times:* Due Date for Letter of Intent: July 11, 2005.

Due Date for Applications: August 4, 2005.

Explanation of Due Dates

The closing time and date for receipt of applications is referenced above. Applications received after 4:30 p.m. eastern time on the closing date will be classified as late.

Deadline: Applications shall be considered as meeting an announced deadline if they are received on or before the deadline time and date of noted in Section IV.3. Applicants are responsible for ensuring applications are mailed well in advance of the application due date.

Applications hand carried by applicants, applicant couriers, other representatives of the applicant, or by overnight/express mail couriers shall be considered as meeting as announced deadline if they are received on or before the deadline date, between the hours of 8 a.m. and 4:30 p.m., eastern time, at the address reference in Section IV, between Monday and Friday (excluding Federal holidays).

NIAID cannot accommodate transmission of applications by fax. Therefore, applications transmitted by FAX will not be accepted regardless of date or time of submission and time of receipt.

Late applications: Applications that do not meet the criteria above are considered late applications. NIAID

shall notify each late application that its application will not be considered in the current competition.

Any application received after 4:30 p.m. eastern time on the deadline date will not be considered for competition.

Applicants using express overnight mail services shall allow two working days prior to the deadline date for receipt of applications. Applicants are cautioned that express/overnight mail services do not always deliver as agreed.

Extension of deadlines: NIAID may extend application deadlines when circumstances such as acts of God (floods, hurricanes, etc.) occur, or when there are widespread disruptions of mail services, or in other rare cases. A determination to extend or waive deadline requirements rests with the Grants Management Officer.

Receipt acknowledgment for application packages will be provided to applicants who submit their package via mail, courier services, or by hand delivery. And e-mail notification will be provided within 14 working days to the principal investigator noted on the contact sheet.

Checklist: You may use the checklist below as a guide when preparing your application package.

1. Application for Federal Assistance (Standard Form 424);

2. Budget Information—Non-construction Programs (Standard Form 424A);

3. Assurances—Non-construction Programs (Standard Form 424B);

4. Table of Contents;

5. Budget Justification for Section B Budget Categories;

6. Proof of Non-profit Status, if appropriate;

7. Copy of the applicant's Approved Indirect Cost Rate Agreement, if necessary;

8. Project Narrative Statement, organized in five sections, addressing the following topics (See Part IV):

(a) Key Trend Analysis

(b) Research Agenda Prospectus

(c) Staff and Organizational Plan

(d) Training and Mentoring Emerging Scholars

(e) Budget Narrative

9. Any appendices or attachments;

10. Certification Regarding Drug-Free Workplace;

11. Certification Regarding Debarment, Suspension, or other Responsibility Matters;

12. Certification and, if necessary, Disclosure Regarding Lobbying;

13. Supplement to Section IV—Key Personnel;

14. Application for Federal Assistant Checklist.

4. *Intergovernmental Review:*

State Single Point of Contact (SOC):

The Department of Health and Human Services has determined that this program is not subject to Executive Order No. 12372, Intergovernmental Review of Federal Programs, because it is a program that is national in scope and the only impact on state and local governments would be through subgrants. Applicants are not required to seek intergovernmental review of their applications within the constraints of Executive Order 12372.

5. *Funding restrictions:* Grant awards will not allow reimbursement of pre-award costs:

6. *Other Submission Requirements:* Submission by Mail: An applicant must provide an original application with all attachments, signed by an authorized representative and two copies.

Applications should be mailed to Theresa Jarosik, Grants Management Specialist, National Institute of Allergy and Infectious Diseases, NIH, DEA, DHHS, 6700B Rockledge Drive, Room 2261, Bethesda, MD 20892-7614. For express mail services please use zip code 20817. Additional contact information is as follows: phone: 301-594-7460, fax: 301-480-2599, e-mail: tjarosik@niaid.nih.gov.

Hand Delivery: An applicant must provide an original application with all attachments signed by an authorized representative and two copies. The application must be received at the address below by 4:30 p.m. eastern time on or before the closing date.

Applications that are hand delivered will be accepted between the hours of 8 a.m. to 4:30 p.m. eastern time, Monday through Friday. Applications should be delivered to Theresa Jarosik, Grants Management Specialist, National Institute of Allergy and Infectious Diseases, NIH, DEA, DHHS, 6700B Rockledge Drive, Room 2261, Bethesda, MD 20892-7614.

Electronic submissions and fax submissions will not be allowed.

V. Application Review Information

The Paperwork Reduction Act of 1995 (Pub. L. 104-13)

Public reporting burden for this collection of information is estimated to average 50 hours per response, including the time for reviewing instructions, gathering and maintaining the data needed and reviewing the collection information.

1. Criteria

Evaluation Criteria

(1) *Approach and Research Plan (30 points).* Reviewers will judge the importance and relevance of the chosen

foci of the proposed Area Poverty Research Center. The foci of the Area Poverty Research Center must be clearly articulated. The importance of the chosen foci must be demonstrated throughout the application. Although ASPE has identified five priority areas the applicant may address note that the applications do not have to address these priority areas. The application must demonstrate an understanding of the significant trends and past related research (see section on application development) especially as it relates to the Area Poverty Research Center's proposed foci. The application must demonstrate the applicant's grasp of the significance of these past trends and research. The proposed research agenda must be consistent with the trends and research analysis (see section on application development) and must build on what is known to address important unknowns.

The descriptions of the proposed first year projects or themes must provide sufficient details that would ensure the likelihood of successful completion. At least two projects/themes must be addressed in the first year plan. The longer term themes and projects must be consistent with the trends and past research analysis and must present a coherent plan. The applicant must present an adequate research planning process which includes ASPE and its outside advisory committee. The proposed research planning approach must adequately demonstrate a commitment to bring a multi-disciplinary approach.

(2) *Dissemination (10 points).* The application must include a detailed dissemination plan. The approach to dissemination must demonstrate thoughtful and effective strategies to reach different audiences—e.g., researchers, policy-makers and practitioners. The dissemination approach must include initiatives such as conferences, workshops, newsletters, publications, working papers, and must be clearly described.

(3) *Quality of proposed staffing and proposed organization arrangements (20 points).* Reviewers will judge the applicant's proposed center director/principal investigator and staff on research experience, administrative skills, and relevant technical experience. Director and staff time commitment to the Center also will be a factor in the evaluation. Applications will be judged on their plans to reach out to researchers within the college/university as well as researchers beyond the host academic center, particularly those from under-represented groups. Plans for internal advisory or

management teams will be assessed. Institutional support (non-monetary as well as monetary support) will also be a factor considered. Efforts to develop or expand the Center's presence on campus and in the broader community will be assessed.

(4) *Training and Mentoring Emerging Scholars (25 points)*. The applicant evaluation will consider proposed efforts to develop and expand a diverse corps of emerging scholars and researchers. The ratings will consider the proposed mentoring and support given to undergraduate and graduate student, research assistants, Ph.D., candidates, postdoctoral students, and other research scholars. The evaluation will include an assessment of plans to integrate the training of research scholars and expose them to policy research activities at ASPE and methods to ensure diversity. The mentoring plan must indicate an adequate level at which investigators have direct contact and/or engage with students. The reviewers will consider proposed efforts to expose and engage students in poverty related research and encourage the pursuit of advanced studies and/or careers in public policy and programs which address the needs of the poverty population.

(5) *Adequacy and Appropriateness of Overall Budget and the Allocation of Resources Across Administrative, Research and Other Areas (15 points)*. The application must include a narrative description and justification for proposed budget line items and demonstrate that the project's costs are adequate, reasonable and necessary for the activities or personnel to be supported. The budget and narrative should have a clear relationship to the approach. The budget must assure an efficient and effective allocation of funds to achieve the objectives of the Center and this solicitation. The budget should reflect an appropriate allocation of funds to support the capacity building functions of the Center—research, mentoring and dissemination. When additional funding is contemplated, applicants should note whether the funding is being donated by the institution, is in-hand from another funding source, or will be applied for from another funding source. Information concerning how the applicant will meet the matching requirement will be evaluated (see Part III, section 2). The budget should include travel for advisory board members.

2. Review and Selection Process

Each application submitted under this program announcement will undergo a

pre-review to determine that (1) the application was received by the closing date and submitted in accordance with the instructions in this announcement, (2) the applicant is eligible for funding (see Part III Section B), and (3) is within the page limit (see Part IV, Section A). Note that applications exceeding the page limit will not be reviewed further and will be ineligible for funding.

Applications for the Area Poverty Research Centers that pass the initial screening will be evaluated and rated by a review panel. The panel will use the evaluation criteria listed below to score each application. The evaluation criteria were designed to assess the quality of the proposed project and to determine the likelihood of its success. The evaluation criteria are closely related and are considered as a whole in judging the overall quality of an application. Points are awarded only to applications that are responsive to the evaluation criteria within the context of this program announcement. These review results will be the primary element used by ASPE in making funding decisions. HHS reserves the option to discuss applications with other federal or state staff, specialists, experts, and the general public. Comments from these sources, along with those of the reviewers, will be kept from inappropriate disclosure and may be considered in making an award decision. Selection of the successful applicant(s) will be based on the technical and financial criteria laid out in this announcement. Reviewers will determine the strengths and weaknesses of each application in terms of the evaluation criteria listed below, provide comments and assign numerical scores—out of a possible 100 points. A summary of all applicant scores and strengths/weaknesses and recommendations will be prepared and submitted to the ASPE for decisions. The point value following each criterion heading indicates the maximum numerical relative weight that each section will be given in the review process. An unacceptable rating on any individual criterion may render the application unacceptable. Consequently, applicants should take care to ensure that all criteria are fully addressed in the applications. Please be sure to refer to Part IV, section 2, application development.

Approval, disapproval, or deferral. On the basis of the review of the application, the Assistant Secretary will either a) approve the application as a whole or in part; b) disapprove the application; or c) defer action on the application for such reasons as lack of funds or a need for further review.

The Assistant Secretary's Discretion. Nothing in this announcement should be construed as to obligate the Assistant Secretary for Planning and Evaluation to make any awards whatsoever. Awards and the distribution of awards among the priority areas are contingent on the needs of the Department at any point in time and the quality of the applications that are received.

Applications must be received in the following format:

1. 12 point font size.
2. Double line spacing (except for appendices).
3. 1 inch top, bottom, left, and right margins.
4. Page limit of 50 pages (excluding appendices).
5. Applications that are not received in the format described above and/or exceed the page limit, will not be reviewed. Applicants are requested to be concise. Applicants are encouraged not to attach or include bound reports or other documents.

VI. Award Administration Information

1. Award Notices

A successful applicant can expect to receive notification of grant award by September 16, 2005. This award, which will be signed by the grants officer, is the authorizing document. It will be provided through postal mail to the institution's grants/financial officer who is identified on the contact information sheet.

Notification of disposition. The Assistant Secretary for Planning and Evaluation will notify the applicants of the disposition of their applications. If approved, a signed notification of the award will be sent to the business office named in the ASPE checklist.

2. Administrative and National Policy Requirements

Grantees are subject to the requirements in 45 CFR Part 74 (non-governmental) or 45 CFR Part 92 (governmental).

All awards are subject to the terms and conditions, cost principles, and other considerations described in the above-mentioned requirements.

For more information on the Code of Federal Regulations, see the National Archives and Records Administration at the following Internet address: <http://www.gpoaccess.gov/cfr/index.html>.

3. Reporting

The awardee will submit quarterly progress reports no later than 30 days following the end of a quarter, i.e., January 31, April 30, July 31, October 31 to the Grants Specialist, Theresa Jarosik,

and the Federal Project Officer, Donald T. Oellerich. In general, the report should be brief and should summarize the progress made toward completion of the project. Particular attention should be given to achieving any milestones set forth in the work plan. Changes of personnel and changes in the allocation of funds between budget categories should be noted. The reasons for any significant delays should be described.

The awardee should submit an annual Financial Status Report (Standard Form 269A). This report is due 90 days after the end of each budget period. The SF-269A is posted at: http://www.whitehouse.gov/omb/grants/grants_forms.html. To download the SF-269A, access to an adobe Acrobat Reader is needed. These reports should be sent to the Grants Specialist, Theresa Jarosik (see address listed above).

The awardee must submit a yearly progress report in order to be eligible to receive continuation funding. This progress report must be received two months prior to the start date of the proposed continuation funding.

VII. Agency Contacts

Administrative questions should be directed to Theresa Jarosik at the address or phone number listed above. Requests for forms and questions (administrative and technical) will be accepted and responded to up to 30 days prior to closing date of receipt of Applications. Technical questions should be directed to Audrey Mirsky-Ashby or Don Oellerich, DHHS, Office of Human Services Policy, Telephone: (202) 690-7409. Questions also may be faxed to (202) 690-6562. Written technical questions should be addressed to Dr. Oellerich or Ms. Mirsky-Ashby at the Department of Health and Human Services, ASPE/HSP, 200 Independence Avenue, SW., Room 404E, Hubert H. Humphrey Building, Washington, DC 20201. (Application submissions may not be faxed.)

VIII. Other Information

Nothing in this announcement should be construed as to obligate the Assistant Secretary for Planning and Evaluation to make any awards whatsoever. Awards and the distribution of awards among the priority areas are contingent on the needs of the Department at any point in time and the quality of the applications that are received.

Dated: June 10, 2005.

Michael J. O'Grady,

Assistant for Secretary for Planning and Evaluation.

[FR Doc. 05-12018 Filed 6-17-05; 8:45 am]

BILLING CODE 4154-05-M

DEPARTMENT OF HEALTH AND HUMAN SERVICES

Centers for Disease Control and Prevention

Guide to Community Preventive Services (GCPS) Task Force: Meeting

In accordance with section 10(a)(2) of the Federal Advisory Committee Act (Pub. L. 92-463), the Centers for Disease Control and Prevention (CDC) announces the following meeting:

Name: Task Force on Community Preventive Services.

Times and Dates: 8 a.m.-6 p.m., June 22, 2005; 8 a.m.-1 p.m., June 23, 2005.

Place: Crowne Plaza Atlanta Buckhead 3377 Peachtree Road NE, Atlanta, Georgia 30326, telephone (404) 264-1111.

Status: Open to the public, limited only by the space available.

Purpose: The mission of the Task Force is to develop and publish a Guide to Community Preventive Services, which is based on the best available scientific evidence and current expertise regarding essential public health and what works in the delivery of those services.

Matters To Be Discussed: Agenda items include: briefings on administrative information, marketing plan and current efforts, update on evaluation of awareness of Community Guide, web-based abstraction form for systematic reviews, revision and web posting of the Community Guide protocol manual, discussion about home visitation programs for violence prevention. Considered reviews and possible recommendations for the following interventions: Violence prevention, including: Reducing the harmful consequences of trauma among juveniles, school violence prevention programs, worksite health promotion, including: Point-of-decision prompts to increase stair use; Incentives to stop using tobacco, and reducing environmental tobacco smoke; HIV risk reduction interventions; provider assessment and feedback to promote cancer screening.

Agenda items are subject to change as priorities dictate.

Contact Person or Additional Information: Peter Briss, M.D., Team Leader, Community Guide, Coordinating Center for Health Information and Service (CoCHIS), National Center for Health Marking, Division of Scientific Communication, 4770 Buford Highway, M/S K95, Atlanta, Georgia 770-488-8338. Persons interested in reserving a space for this meeting should call 770/488-8590 by close of business on June 21, 2005.

The Director, Management Analysis and Services Office, has been delegated the authority to sign **Federal Register** notices pertaining to announcements of meetings and other committee management activities, for both CDC and the Agency for Toxic Substances and Disease Registry.

Dated: June 14, 2005.

Alvin Hall,

Director, Management Analysis and Services Office, Centers for Disease Control and Prevention.

[FR Doc. 05-12062 Filed 6-17-05; 8:45 am]

BILLING CODE 4163-18-P

DEPARTMENT OF HEALTH AND HUMAN SERVICES

Centers for Disease Control and Prevention

Disease, Disability, and Injury Prevention and Control Special Emphasis Panel (SEP): Validation of Stroke Care Quality Indicators for the Paul Coverdale National Stroke Care Registry, Panel 2, Potential Extramural Project (PEP) R04

In accordance with Section 10(a)(2) of the Federal Advisory Committee Act (Pub. L. 92-463), the Centers for Disease Control and Prevention (CDC) announces the following meeting:

Name: Disease, Disability, and Injury Prevention and Control Special Emphasis Panel (SEP): Validation of Stroke Care Quality Indicators for the Paul Coverdale National Stroke Care Registry, Panel 2, Potential Extramural Project (PEP) R04.

Times and Dates: 3:30 p.m.-5 p.m., July 11, 2005 (Closed).

Place: Teleconference.

Status: The meeting will be closed to the public in accordance with provisions set forth in Section 552b(c) (4) and (6), Title 5 U.S.C., and the Determination of the Director, Management Analysis and Services Office, CDC, pursuant to Public Law 92-463.

Matters To Be Discussed: The meeting will include the review, discussion, and evaluation of applications received in response to: Validation of Stroke Care Quality Indicators for the Paul Coverdale National Stroke Care Registry, Panel 2, Potential Extramural Project (PEP) R04.

Contact Person for More Information: J. Felix Rogers, Ph.D., M.P.H., Scientific Program Administrator, National Immunization Program, CDC, 1600 Clifton Road NE., Mailstop E-05, Atlanta, GA 30333, Telephone 404.639.6101.

The Director, Management Analysis and Services Office, has been delegated the authority to sign **Federal Register** notices pertaining to announcements of meetings and other committee management activities, for both CDC and the Agency for Toxic Substances and Disease Registry.

Dated: June 13, 2005.

Alvin Hall,

Director, Management Analysis and Services Office, Centers for Disease Control and Prevention.

[FR Doc. 05-12059 Filed 6-17-05; 8:45 am]

BILLING CODE 4163-18-P

DEPARTMENT OF HEALTH AND HUMAN SERVICES**Centers for Disease Control and Prevention****Disease, Disability, and Injury Prevention and Control Special Emphasis Panel (SEP): Public Health Burden of Antimicrobial Resistant Streptococcus Pneumoniae, Panel 1, Potential Extramural Project (PEP), R02**

In accordance with Section 10(a)(2) of the Federal Advisory Committee Act (Pub. L. 92-463), the Centers for Disease Control and Prevention (CDC) announces the following meeting:

Name: Disease, Disability, and Injury Prevention and Control Special Emphasis Panel (SEP): Public Health Burden of Antimicrobial Resistant Streptococcus Pneumoniae, Panel 1, Potential Extramural Project (PEP), R02.

Times and Dates: 1:30 p.m.–3 p.m., July 11, 2005 (Closed).

Place: Teleconference.

Status: The meeting will be closed to the public in accordance with provisions set forth in Section 552b(c) (4) and (6), Title 5 U.S.C., and the Determination of the Director, Management Analysis and Services Office, CDC, pursuant to Public Law 92-463.

Matters To Be Discussed: The meeting will include the review, discussion, and evaluation of applications received in response to: Public Health Burden of Antimicrobial Resistant Streptococcus Pneumoniae, Panel 1, Potential Extramural Project (PEP), R02.

Contact Person for More Information: J. Felix Rogers, Ph.D., M.P.H., Scientific Program Administrator, National Immunization Program, CDC, 1600 Clifton Road NE., Mailstop E-05, Atlanta, GA 30333, Telephone 404.639.6101.

The Director, Management Analysis and Services Office, has been delegated the authority to sign **Federal Register** notices pertaining to announcements of meetings and other committee management activities, for both CDC and the Agency for Toxic Substances and Disease Registry.

Dated: June 13, 2005.

Alvin Hall,

Director, Management Analysis and Services Office, Centers for Disease Control and Prevention.

[FR Doc. 05-12071 Filed 6-17-05; 8:45 am]

BILLING CODE 4163-18-P

DEPARTMENT OF HEALTH AND HUMAN SERVICES**Centers for Disease Control and Prevention****The National Institute for Occupational Safety and Health (NIOSH)**

Name: Discussion of Concepts for Standards for Approval of Respirators for Use against Chemical, Biological, Radiological and Nuclear Agents (CBRN) and Guidelines for their Use; and Concepts for Standards for a Multi-Function Powered Air Purifying Respirator (PAPR).

Dates and Times: July 19, 2005; 10 a.m.–4 p.m. July 20, 2005; 8:30 a.m.–3 p.m.

The Meeting on July 19 will address concepts for standards for CBRN Closed Circuit, Self Contained Breathing Apparatus (SCBA) and guidelines for use of NIOSH approved CBRN respirators. The Meeting on July 20 will address concepts for standards for a CBRN Powered Air Purifying Respirator and a Multi-Function PAPR.

Place: Holiday Inn Select Pittsburgh South, 164 Fort Couch Road, Pittsburgh, Pennsylvania.

Purpose: NIOSH will continue discussions of concepts for standards and testing processes for PAPR and Closed Circuit, SCBA suitable for respiratory protection against CBRN agents. NIOSH will also introduce concepts for establishing multi-function PAPR requirements and guidelines for use of NIOSH-approved CBRN respirators. NIOSH, along with the U.S. Army Research, Development and Engineering Command (RDECOM) and the National Institute for Standards and Technology (NIST), will present information to attendees concerning the concept development for the CBRN PAPR standard and the CBRN Closed Circuit, SCBA standard. Participants will be given an opportunity to ask questions on these topics and to present individual comments for consideration. Interested participants may obtain a copy of the CBRN PAPR, the Multi-Function PAPR concept paper, the CBRN Closed Circuit, Self Contained Breathing Apparatus concept paper, and concepts for the guidance documents, as well as earlier versions of other concept papers used during the standard development effort, from the NIOSH National Personnel Protective Technology Laboratory (NPPTL) web site, address: <http://www.cdc.gov/niosh/npptl>. The June 20, 2005, concept papers will be used as the basis for discussion at the public meeting. Municipal, state, and federal responder

groups, particularly in locations considered potential terrorism targets, have been developing and modifying response and consequence management plans for domestic security and preparedness issues. Since the World Trade Center and anthrax incidents, most emergency response agencies have operated with a heightened appreciation of the potential scope and sustained resource requirements for coping with such events. The federal Interagency Board for Equipment Standardization and Interoperability (IAB) has worked to identify personal protective equipment that is already available on the market for responders' use. The IAB has identified the development of standards or guidelines for respiratory protection equipment as a top priority. NIOSH, NIST, the National Fire Protection Association (NFPA), and the Occupational Safety and Health Administration have entered into a Memorandum of Understanding defining each agency or organization's role in developing, establishing, and enforcing standards or guidelines for responders' respiratory protective devices. NIST has initiated Interagency Agreements with NIOSH and RDECOM to aid in the development of appropriate protection standards or guidelines. NIOSH has the lead in developing standards or guidelines to test, evaluate, and approve respirators. NIOSH, RDECOM, and NIST hosted public meetings on April 17 and 18, 2001; June 18 and 19, 2002; October 16 and 17, 2002; April 29, 2003; June 25, 2003; October 16, 2003; May 4, 2004; and December 15, 2004; presenting their progress in assessing respiratory protection needs of responders to CBRN incidents. The methods or models for developing hazard and exposure estimates and the status in evaluating test methods and performance standards that may be applicable as future CBRN respirator standards or guidelines were discussed at these meetings. Three NIOSH CBRN respirator standards and several NFPA standards for ensembles, SCBA, and protective clothing were the first adopted by the U.S. Department of Homeland Security (DHS). On February 26, 2004, DHS adopted, as DHS standards, three NIOSH criteria for testing and certifying respirators for protection against CBRN exposures. NIOSH uses the criteria to test (1) SCBA for use by emergency responders against CBRN, (2) PAPR for use by emergency responders against CBRN exposures, and (3) escape respirators for protection against CBRN.

Status: This meeting is hosted by NIOSH and will be open to the public,

limited only by the space available. The meeting room will accommodate approximately 150 people. Interested parties should make hotel reservations directly with the Holiday Inn Select Pittsburgh South (412-833-5300 or 1-800-HOLIDAY) before the cut-off date of June 27, 2005. A special group rate of \$94 per night for meeting guests has been negotiated for this meeting. The NIOSH/NPPTL Public Meeting must be referenced to receive this rate. Interested parties should confirm their attendance to this meeting by completing a registration form and forwarding it by e-mail (npptlevents@cdc.gov) or fax (304-225-2003) to the NPPTL Event Management Office. A registration form may be obtained from the NIOSH Homepage (<http://www.cdc.gov/niosh>) by selecting conferences and then the event.

An opportunity to make presentations regarding the discussions of concepts for standards and testing processes for PAPR standards and for Closed Circuit, SCBA Breathing Apparatus standards suitable for respiratory protection against CBRN agents, multi-function PAPRs for industrial applications, and guidelines for use of NIOSH-approved CBRN respirators will be given. Requests to make such presentations at the public meeting should be made by e-mail to the NPPTL Event Management Office (npptlevents@cdc.gov). All requests to present should include the name, address, telephone number, relevant business affiliations of the presenter, a brief summary of the presentation, and the approximate time requested for the presentation. Oral presentations should be limited to 15 minutes. After reviewing the requests for presentation, NPPTL Event Management will notify each presenter of the approximate time that their presentation is scheduled to begin. If a participant is not present when their presentation is scheduled to begin, the remaining participants will be heard in order. At the conclusion of the meeting, an attempt will be made to allow presentations by any scheduled participants who missed their assigned times. Attendees who wish to speak but did not submit a request for the opportunity to make a presentation may be given this opportunity at the conclusion of the meeting, at the discretion of the presiding officer.

Comments on the topics presented in this notice and at the meeting should be mailed to: NIOSH Docket Office, Robert A. Taft Laboratories, M/S C34, 4676 Columbia Parkway, Cincinnati, Ohio 45226, Telephone 513-533-8303, Fax 513-533-8285. Comments may also be submitted by e-mail to

niocindocket@cdc.gov. E-mail attachments should be formatted in Microsoft Word. Comments should be submitted to NIOSH no later than August 19, 2005. Comments regarding the Multi-Function PAPR should reference Docket Number NIOSH-008 in the subject heading. Comments regarding CBRN PAPR should reference Docket Number NIOSH-010 in the subject heading. Comments regarding the CBRN Closed Circuit, SCBA should reference Docket Number NIOSH-039.

Contact for Additional Information: NPPTL Event Management, 3604 Collins Ferry Road, Suite 100, Morgantown, West Virginia 26505-2353, Telephone 304-599-5941 x138, Fax 304-225-2003, E-mail npptlevents@cdc.gov.

The Director, Management Analysis and Services Office, has been delegated the authority to sign **Federal Register** Notices pertaining to announcements of meetings and other committee management activities, for both the Centers for Disease Control and Prevention and the Agency for Toxic Substances and Disease Registry.

Dated: June 14, 2005.

Alvin Hall,

Director, Management Analysis and Services Office, Centers for Disease Control and Prevention.

[FR Doc. 05-12057 Filed 6-17-05; 8:45 am]

BILLING CODE 4163-19-P

DEPARTMENT OF HEALTH AND HUMAN SERVICES

Food and Drug Administration

[Docket No. 2005N-0186]

Agency Information Collection Activities; Proposed Collection; Comment Request; State Enforcement Notifications

AGENCY: Food and Drug Administration, HHS.

ACTION: Notice.

SUMMARY: The Food and Drug Administration (FDA) is announcing an opportunity for public comment on the proposed collection of certain information by the agency. Under the Paperwork Reduction Act of 1995 (the PRA), Federal agencies are required to publish notice in the **Federal Register** concerning each proposed collection of information, including each proposed extension of an existing collection of information, and to allow 60 days for public comment in response to the notice. This notice solicits comments on reporting requirements contained in existing FDA regulations governing State enforcement notifications.

DATES: Submit written or electronic comments on the collection of information by August 19, 2005.

ADDRESSES: Submit electronic comments on the collection of information to: <http://www.fda.gov/dockets/ecomments>. Submit written comments on the collection of information to the Division of Dockets Management (HFA-305), Food and Drug Administration, 5630 Fishers Lane, rm. 1061, Rockville, MD 20852. All comments should be identified with the docket number found in brackets in the heading of this document.

FOR FURTHER INFORMATION CONTACT: Peggy Robbins, Office of Management Programs (HFA-250), Food and Drug Administration, 5600 Fishers Lane, Rockville, MD 20857, 301-827-1223.

SUPPLEMENTARY INFORMATION: Under the PRA (44 U.S.C. 3501-3520), Federal agencies must obtain approval from the Office of Management and Budget (OMB) for each collection of information they conduct or sponsor. "Collection of information" is defined in 44 U.S.C. 3502(3) and 5 CFR 1320.3(c) and includes agency requests or requirements that members of the public submit reports, keep records, or provide information to a third party. Section 3506(c)(2)(A) of the PRA (44 U.S.C. 3506(c)(2)(A)) requires Federal agencies to provide a 60-day notice in the **Federal Register** concerning each proposed collection of information, including each proposed extension of an existing collection of information, before submitting the collection to OMB for approval. To comply with this requirement, FDA is publishing notice of the proposed collection of information set forth in this document.

With respect to the following collection of information, FDA invites comments on these topics: (1) Whether the proposed collection of information is necessary for the proper performance of FDA's functions, including whether the information will have practical utility; (2) the accuracy of FDA's estimate of the burden of the proposed collection of information, including the validity of the methodology and assumptions used; (3) ways to enhance the quality, utility, and clarity of the information to be collected; and (4) ways to minimize the burden of the collection of information on respondents, including through the use of automated collection techniques, when appropriate, and other forms of information technology.

State Enforcement Notifications—21 CFR 100.2(d) (OMB Control Number 0910–0275)—Extension

Section 310(b) of the Federal Food, Drug, and Cosmetic Act (the act) (21 U.S.C. 337(b)) authorizes States to enforce certain sections of the act in their own names, but provides that

States must notify FDA before doing so. Section 100.2(d) (21 CFR 100.2 (d)) sets forth the information that a State must provide to FDA in a letter of notification when it intends to take enforcement action under the act against a particular food located in the State. The information required under § 100.2(d) will enable FDA to identify the food

against which the State intends to take action and advise the State whether Federal action has been taken against it. With certain narrow exceptions, Federal enforcement action precludes State action under the act.

FDA estimates the burden of this collection of information as follows:

TABLE 1.—ESTIMATED ANNUAL REPORTING BURDEN¹

21 CFR Section	No. of Respondents	Annual Frequency per Response	Total Annual Responses	Hours Per Response	Total Hours
100.2(d)	1	1	1	10	10

¹There are no capital costs or operating and maintenance costs associated with this collection of information.

The reporting burden for § 100.2(d) is insignificant because enforcement notifications are seldom used by States. During the last 3 years, FDA has not received any enforcement notifications. Since the enactment of section 403A(b) of the act (21 U.S.C. 343–1(b)) as part of the Nutrition Labeling and Education Act of 1990, FDA has received only a few enforcement notifications. Although FDA believes that the burden will be insignificant, it believes these information collection provisions should be extended to provide for the potential future need of a State government to submit enforcement notifications informing FDA when it intends to take enforcement action under the act against a particular food located in the State.

Dated: June 14, 2005.

Jeffrey Shuren,

Assistant Commissioner for Policy.

[FR Doc. 05–12055 Filed 6–17–05; 8:45 am]

BILLING CODE 4160–01–S

DEPARTMENT OF HEALTH AND HUMAN SERVICES**Food and Drug Administration**

[Docket No. 2003D–0549]

Guidance for Industry on Clozapine Tablets: In Vivo Bioequivalence and In Vitro Dissolution Testing; Availability

AGENCY: Food and Drug Administration, HHS.

ACTION: Notice.

SUMMARY: The Food and Drug Administration (FDA) is announcing the availability of a guidance for industry entitled “Clozapine Tablets: In Vivo Bioequivalence and In Vitro Dissolution Testing.” The guidance was originally published in November 1996. However, because of potentially significant

adverse effects seen in healthy subjects who had not previously used clozapine, FDA proposed a revision to the guidance in a draft published in December 2003. FDA did not receive comments on the draft guidance during the comment period. This final version of the 2003 draft guidance includes a change in the recommended patient population as well as other minor changes that are based on current information available to FDA.

DATES: Submit written or electronic comments on agency guidances at any time.

ADDRESSES: Submit written requests for single copies of this guidance to the Division of Drug Information (HFD–240), Center for Drug Evaluation and Research, Food and Drug Administration, 5600 Fishers Lane, Rockville, MD 20857. Send one self-addressed adhesive label to assist that office in processing your requests. Submit written comments on the guidance to the Division of Dockets Management (HFA–305), Food and Drug Administration, 5630 Fishers Lane, rm. 1061, Rockville, MD 20852. Submit electronic comments to <http://www.fda.gov/dockets/ecomments>. See the **SUPPLEMENTARY INFORMATION** section for electronic access to the guidance document.

FOR FURTHER INFORMATION CONTACT: Lizzie Sanchez, Center for Drug Evaluation and Research (HFD–650), Food and Drug Administration, 5600 Fishers Lane, Rockville, MD 20857, 301–827–5847.

SUPPLEMENTARY INFORMATION:**I. Background**

FDA is announcing the availability of a guidance for industry entitled “Clozapine Tablets: In Vivo Bioequivalence and In Vitro Dissolution Testing.” This guidance is being issued

because of necessary changes to recommendations provided in a previous guidance on the same topic that published in November 1996. In the **Federal Register** of December 30, 2003 (68 FR 75262), FDA published a document that proposed revisions to the 1996 guidance and that provided information to the pharmaceutical industry regarding the design of bioequivalence studies for generic clozapine products.

In the 1996 guidance, FDA recommended that doses of one-half of a 25 milligram clozapine tablet be administered to healthy subjects in bioequivalence studies for generic clozapine products. The guidance also provided an option for conducting studies in the appropriate patient population. However, in the 2003 draft guidance, FDA proposed that such studies not be conducted in healthy subjects because a high number of healthy subjects experienced serious adverse effects such as hypotension, bradycardia, syncope, and asystole during clozapine bioequivalence studies. FDA did not receive comments on the 2003 draft guidance during the comment period.

This final version of the 2003 draft guidance has been further revised to provide recommendations describing the use of an appropriate patient population that is already stable on a dose of clozapine. The use of healthy subjects who had not previously used clozapine is no longer recommended in this final version of the guidance, which will ensure the safety of subjects in bioequivalence studies on clozapine.

This guidance is being issued consistent with FDA’s good guidance practices regulation (21 CFR 10.115). The guidance represents the agency’s current thinking on clozapine tablets: in vivo and in vitro dissolution testing. It does not create or confer any rights for

or on any person and does not operate to bind FDA or the public. An alternative approach may be used if such approach satisfies the requirements of the applicable statutes and regulations.

II. Comments

Interested persons may submit to the Division of Dockets Management (see **ADDRESSES**) written or electronic comments regarding this document. Submit a single copy of electronic comments or two paper copies of any mailed comments, except that individuals may submit one paper copy. Comments are to be identified with the docket number found in brackets in the heading of this document. Received comments may be seen in the Division of Dockets Management between 9 a.m. and 4 p.m., Monday through Friday.

III. Electronic Access

Persons with access to the Internet may obtain the document at either <http://www.fda.gov/cder/guidance/index.htm> or <http://www.fda.gov/ohrms/dockets/default.htm>.

Dated: June 9, 2005.

Jeffrey Shuren,

Assistant Commissioner for Policy.

[FR Doc. 05-12039 Filed 6-17-05; 8:45 am]

BILLING CODE 4160-01-S

DEPARTMENT OF HEALTH AND HUMAN SERVICES

Food and Drug Administration

[Docket No. 2005D-0223]

Draft Guidance for Industry on Nonclinical Evaluation of Late Radiation Toxicity of Therapeutic Radiopharmaceuticals; Availability

AGENCY: Food and Drug Administration, HHS.

ACTION: Notice.

SUMMARY: The Food and Drug Administration (FDA) is announcing the availability of a draft guidance for industry entitled "Nonclinical Evaluation of Late Radiation Toxicity of Therapeutic Radiopharmaceuticals." The purpose of this draft guidance is to provide recommendations to industry for designing nonclinical toxicity studies to determine potential late radiation toxicities (radiation-induced injuries occurring after a latency period of several months to years) of therapeutic radiopharmaceuticals administered systemically. The purpose of such studies is to help minimize the risk of late-occurring irreversible

radiation toxicities in clinical studies of therapeutic radiopharmaceuticals.

DATES: Submit written or electronic comments on the draft guidance by September 19, 2005. General comments on agency guidance documents are welcome at any time.

ADDRESSES: Submit written requests for single copies of the draft guidance to the Division of Drug Information (HFD-240), Center for Drug Evaluation and Research, Food and Drug Administration, 5600 Fishers Lane, Rockville, MD 20857. Send one self-addressed adhesive label to assist that office in processing your requests. Submit written comments on the draft guidance to the Division of Dockets Management (HFA-305), Food and Drug Administration, 5630 Fishers Lane, rm. 1061, Rockville, MD 20852. Submit electronic comments to <http://www.fda.gov/dockets/ecomments>. See the **SUPPLEMENTARY INFORMATION** section for electronic access to the draft guidance document.

FOR FURTHER INFORMATION CONTACT:

Adebayo Laniyonu or Renee Tyson, Center for Drug Evaluation and Research (HFD-160), Food and Drug Administration, 5600 Fishers Lane, Rockville, MD 20857, 301-827-7510.

SUPPLEMENTARY INFORMATION:

I. Background

FDA is announcing the availability of a draft guidance for industry entitled "Nonclinical Evaluation of Late Radiation Toxicity of Therapeutic Radiopharmaceuticals." The objective of this guidance is to provide recommendations to industry for designing nonclinical toxicity studies to determine potential late radiation toxicities of therapeutic radiopharmaceutical agents. This guidance is not intended for diagnostic radiopharmaceuticals or for radiobiologicals (e.g., radiolabeled monoclonal antibodies).

Late radiation toxicity differs from early or acute radiation toxicity. Acute radiation toxicity (e.g., bone marrow failure, nausea, vomiting, diarrhea, and oral mucositis) occurs within days to weeks of an acute dose of radiation and is often self-limiting and reversible. In contrast, late radiation toxicity (e.g., renal failure, pulmonary fibrosis, and chord transection) occurs after a latency period of several months to years, during which relatively normal organ function continues. Late radiation toxicity is usually progressive and irreversible.

Therapeutic radiopharmaceuticals are typically administered systemically to treat cancer. The radiation absorbed

doses delivered by therapeutic radiopharmaceuticals may be comparable to those delivered with external beam radiotherapy (XRT). At therapeutic doses of radiation, the late radiation toxicities commonly associated with XRT (e.g., brain necrosis, paralysis, pulmonary fibrosis, liver or kidney failure, and hemorrhagic cystitis) can also be seen with therapeutic radiopharmaceuticals. With XRT, if the total dose given to an organ is less than its tolerance dose, the probability of symptomatic late radiation toxicity to that organ will be minimal. The tolerance doses of most human organs for conventional fractionated XRT are known, and are routinely used to direct the safe administration of XRT. In FDA's experience, however, there are few clinical data from which to estimate organ tolerance doses for therapeutic radiopharmaceuticals. Furthermore, late radiation toxicity has been observed when Medical Internal Radiation Dose (MIRDose) estimates of radiation absorbed doses delivered by therapeutic radiopharmaceuticals to target organs were substantially below the published XRT organ tolerance doses.

Therefore, there is a need to gain additional knowledge in this area to support the safe administration of therapeutic radiopharmaceuticals to humans. Because studies in humans would be unethical, the best means to gain insight into this issue is by conducting nonclinical late radiation toxicity studies. These studies will aid in identifying organs at risk and establish a margin of safety for late radiation toxicity. As a result, these studies will help to minimize the risk of late-occurring radiation toxicities in clinical studies of therapeutic radiopharmaceuticals.

This draft guidance focuses solely on late radiation safety concerns that are unique to therapeutic radiopharmaceuticals, and provides recommendations for late radiation toxicity nonclinical study designs including issues regarding good laboratory practices, species selection, dose selection, timing of study, and study parameters.

This draft guidance is being issued consistent with FDA's good guidance practices regulation (21 CFR 10.115). The draft guidance, when finalized, will represent the agency's current thinking on nonclinical evaluation of late radiation toxicity of therapeutic radiopharmaceuticals. It does not create or confer any rights for or on any person and does not operate to bind FDA or the public. An alternative approach may be used if such approach satisfies the

requirements of the applicable statutes and regulations.

II. Comments

Interested persons may submit to the Division of Dockets Management (see **ADDRESSES**) written or electronic comments regarding this document. Submit a single copy of electronic comments or two paper copies of any mailed comments, except that individuals may submit one paper copy. Comments are to be identified with the docket number found in brackets in the heading of this document. The draft guidance and received comments may be seen in the Division of Dockets Management between 9 a.m. and 4 p.m., Monday through Friday.

III. Electronic Access

Persons with access to the Internet may obtain the document at either <http://www.fda.gov/cder/guidance/index.htm> or <http://www.fda.gov/ohrms/dockets/default.htm>.

Dated: June 9, 2005.

Jeffrey Shuren,

Assistant Commissioner for Policy.

[FR Doc. 05-12040 Filed 6-17-05; 8:45 am]

BILLING CODE 4160-01-S

DEPARTMENT OF HOUSING AND URBAN DEVELOPMENT

[Docket No. FR-4975-N-18]

Notice of Proposed Information Collection: Comment Request; Request for Credit Approval of Substitute Mortgagor

AGENCY: Office of the Assistant Secretary for Housing-Federal Housing Commissioner, HUD.

ACTION: Notice.

SUMMARY: The proposed information collection requirement described below will be submitted to the Office of Management and Budget (OMB) for review, as required by the Paperwork Reduction Act. The Department is soliciting public comments on the subject proposal.

DATES: Comments Due Date: August 19, 2005.

ADDRESSES: Interested persons are invited to submit comments regarding this proposal. Comments should refer to the proposal by name and/or OMB Control Number and should be sent to: Wayne Eddins, Reports Management Officer, Department of Housing and Urban Development, 451 7th Street, SW., L'Enfant Plaza Building, Room 8001, Washington, DC 20410 or Wayne_Eddins@hud.gov.

FOR FURTHER INFORMATION CONTACT:

Joseph McCloskey, Director, Office of Single Family Asset Management, 451 7th Street SW., Washington, DC 20410, telephone (202) 708-1672 (this is not a toll free number) for copies of the proposed forms and other available information.

SUPPLEMENTARY INFORMATION: The Department is submitting the proposed information collection to OMB for review, as required by the Paperwork Reduction Act of 1995 (44 U.S.C. Chapter 35, as amended).

This Notice is soliciting comments from members of the public and affected agencies concerning the proposed collection of information to: (1) Evaluate whether the proposed collection is necessary for the proper performance of the functions of the agency, including whether the information will have practical utility; (2) Evaluate the accuracy of the agency's estimate of the burden of the proposed collection of information; (3) Enhance the quality, utility, and clarity of the information to be collected; and (4) Minimize the burden of the collection of information on those who are to respond; including the use of appropriate automated collection techniques or other forms of information technology, e.g., permitting electronic submission of responses.

This Notice also lists the following information:

Title of Proposal: Request for Credit Approval of Substitute Mortgagor.

OMB Control Number, if applicable: 2502-0036.

Description of the need for the information and proposed use: This information collection is used by HUD to approve the credit of a substitute mortgagor who desires to assume an FHA-insured mortgage. The information is also needed to document the financial stability of the mortgagor.

Agency form numbers, if applicable: HUD-92210 and HUD-92210.1.

Estimation of the total numbers of hours needed to prepare the information collection including number of respondents, frequency of response, and hours of response: The estimated total number of hours needed to prepare the information collection is 2,400. The number of respondents is 600 generating approximately 2,400 annual responses, the frequency of response is on occasion, and the number of hours per response is one.

Status of the proposed information collection: Currently approved.

Authority: The Paperwork Reduction Act of 1995, 44 U.S.C., Chapter 35, as amended.

Dated: June 3, 2005.

Frank L. Davis,

General Deputy Assistant Secretary for Housing-Deputy Federal Housing Commissioner.

[FR Doc. 05-12027 Filed 6-17-05; 8:45 am]

BILLING CODE 4210-27-P

DEPARTMENT OF THE INTERIOR

Fish and Wildlife Service

Notice of Availability of the Draft Comprehensive Conservation Plan and Environmental Assessment for Sand Lake National Wildlife Refuge, Columbia, SD

AGENCY: Fish and Wildlife Service, Interior.

ACTION: Notice of Availability.

SUMMARY: The U.S. Fish and Wildlife Service (Service) announces that the Draft Comprehensive Conservation Plan and Environmental Assessment (CCP/EA) for the Sand Lake National Wildlife Refuge (Refuge) is available for public review and comment. This Draft CCP/EA was prepared pursuant to the National Wildlife Refuge System Administration Act, as amended, and the National Environmental Policy Act (NEPA). The Draft CCP/EA describes the Service's proposal for management of the Refuge for 15 years.

DATES: Written comments must be received at the postal or electronic addresses listed below by July 20, 2005. Comments may also be submitted VIA electronic mail to: kathleen_linder@fws.gov.

ADDRESSES: To provide written comments or to obtain a copy of the Draft CCP/EA, please write to Linda Kelly, Planning Team Leader, U.S. Fish and Wildlife Service, P.O. Box 25486, Denver Federal Center, Denver, CO 80225-0486; (303) 236-8132; fax (303) 236-4792, or Gene Williams, Refuge Manager, Sand Lake National Wildlife Refuge, 39650 Sand Lake Drive, Columbia, South Dakota 57433; (605) 885-6320; fax (605) 885-6401. The Draft CCP/EA will also be available for viewing and downloading online at <http://mountain-prairie.fws.gov/planning>.

FOR FURTHER INFORMATION CONTACT: Linda Kelly, Planning Team Leader at the above address or at (303) 236-8132.

SUPPLEMENTARY INFORMATION: The National Wildlife System Administration Act of 1966, as amended by the National Wildlife Refuge Improvement Act of 1997 (16 U.S.C. 668dd-668ee *et seq*), requires the

Service to develop a CCP for each National Wildlife Refuge. The purpose in developing a CCP is to provide refuge managers with a 15-year strategy for achieving refuge purposes and contributing toward the mission of the National Wildlife Refuge System, consistent with sound principles of fish and wildlife management, conservation, legal mandates, and Service policies.

In addition to outlining broad management direction on conserving wildlife and their habitats, the CCP identifies wildlife-dependent recreational opportunities available to the public, including opportunities for hunting, fishing, wildlife observation and photography, and environmental education and interpretation. We will review and update these CCPs at least every 15 years in accordance with the National Wildlife Refuge System Administration Act of 1966, as amended by the National Refuge System Improvement Act of 1997, and the National Environmental Policy Act of 1969 (42 U.S.C. 4321–4370d).

Background

Sand Lake NWR was established by Executive Order 6724, dated May 28, 1934, and Executive Order 7169, dated September 4, 1935, as a Refuge and breeding ground for migratory birds and other wildlife. Sand Lake National Wildlife Refuge was established for * * * “use by migratory birds, with emphasis on waterfowl and other water birds” and “the conservation of fish and wildlife resources.”

Significant issues addressed in the Draft CCP/EA include: Wildlife and habitat management, water management, public use, and invasive plants. The Service developed three alternatives for management of the Refuge: Alternative 1—No Action; Alternative 2—Maximize biological potential for grassland-nesting birds; Alternative 3—Integrated management. All three alternatives outline specific management objectives and strategies related to wildlife and habitat management, water management, public use, and invasive plant control.

Alternative 1—No Action (Current Management) would continue and would not involve extensive restoration of cropland, grassland, and wetland habitat, or improvements to roads and administrative facilities. Grasslands would be managed to provide habitat for upland nesting waterfowl. Shelterbelt woodlands would deteriorate and die out, benefiting grassland-nesting birds. Species of migratory birds that use fringes would decrease.

Cropland would be maintained to control invasive plants and to provide

food for resident wildlife. Deer and pheasant populations would be sustained, along with hunting and viewing opportunities for these species.

In addition to herbicides, management tools such as grazing, burning, mowing, and farming would be used to maintain the quality of upland habitat.

Invasive-plant infestations may increase or decrease, depending on environmental conditions. Using herbicides to control invasive plants would reduce the diversity and quality of grasslands, and may spread toxic and persistent chemicals into the environment.

Sedimentation rates near the Mud Lake dike are expected to remain elevated near current levels, thereby continuing to degrade the wetland functions of Mud Lake.

The ability to cycle vegetation and create an interspersed cover and water to meet objectives in Mud Lake through current water-level manipulations would be hindered. Reduced invertebrate production may impact nutrient cycling and overall wetland productivity, as well as limit a major food source for waterfowl and other wildlife.

All hunting and fishing seasons would continue as presently managed. No new parking areas would be developed.

Alternative 2—Maximize biological potential for grassland-nesting birds would involve intense management of upland habitat to maximize numbers of migratory birds, because of their importance as Federal Trust Species.

The amount of grassland habitat would be maximized by the elimination of croplands, decreased wetland acreage with the removal or breaching of dikes, and the elimination of shelterbelts. The number of acres of invasive plants might increase due to lower water levels.

Grassland-dependent birds would benefit from larger blocks of nesting habitat and the elimination of travel corridors and den sites for predators. The number and diversity of tree-nesting species and edge species would be reduced.

The diversity of wetland-dependent species would decline due to the decreased wetland acreage and lack of water control. The number of waterfowl would probably decline. Use of the refuge by overwater-nesting colonial birds would decline.

White-tailed deer use of the refuge would likely be sustained. With the elimination of all cropland, depredation on neighboring crops may increase.

Sedimentation rates in wetlands would decline with the removal or

breaching of the dikes, resulting in long-term benefits to water quality.

An education and visitor center would be built to allow visitors to learn about wildlife and experience the refuge without disturbing wildlife.

Conflicts between humans and nesting, brooding, and foraging birds would be avoided through restriction or elimination of nearly all spring and summer recreational use and some fall recreational use of the James River within the refuge.

Deer and upland-game hunting would continue. Accessibility of deer and upland-game to hunters would likely decrease. Migrating waterfowl may pass through the refuge more quickly during the fall. Overall hunter satisfaction may decrease as the quality of hunting and harvest opportunities decreases.

Fall and winter fishing would be allowed at five designated areas. Spring and summer fishing opportunities would be eliminated to avoid direct conflicts with nesting and brooding migratory birds.

Alternative 3—Integrated Management, the Service's Proposed Action, takes an integrated approach that maximizes the biological potential for migratory birds, and finds a balance with reducing cropland, while ensuring depredation is minimized.

Cropland acreage would be reduced. Upland habitat management would be geared toward providing tall and dense nesting cover on a high percentage of the uplands for nesting birds, especially waterfowl.

The vegetative diversity of grasslands would be greatly enhanced by re-seeding all habitat blocks to native plants or rejuvenated dense nesting cover.

The die-off of some shelterbelts and removal of isolated trees would increase the size of grassland blocks for nesting migratory birds.

Although more grassland-dependent birds may be able to use the refuge, nesting success is not expected to increase. Remaining shelterbelts would provide travel corridors and den sites that help support a robust population of predators.

The five sub-impoundments would be managed as shallow-water wetlands for waterfowl breeding pairs and broods, nesting black terns and pied-billed grebes, and foraging water birds and shorebirds.

Deer and pheasant populations would be sustained, along with hunting and viewing opportunities for these species. Depredation issues would be a function of the location and size of the total farmed acreage.

The size and location of remaining cropland would be based on the need to control invasive plants, especially Canada thistle. Grasslands infested with Canada thistle would be tilled and planted with native vegetation or dense nesting cover after the area is considered clear of viable Canada thistle seed. Canada thistle should be much more contained than it is currently, reducing the potential for a thistle seed source to invade adjacent or downstream private lands.

Watershed-level conservation efforts through partnerships may result in a long-term reduction of sediment entering the James River and refuge.

Sedimentation rates near the Mud Lake dike are expected to remain elevated near current levels in the short term, thereby continuing to degrade the wetland functions of Mud Lake.

The ability to cycle vegetation and create an interspersed cover and water to meet objectives in Mud Lake through current water-level manipulations would be hindered. Reduced invertebrate production may impact nutrient cycling and overall wetland productivity, as well as limit a major food source for waterfowl and other wildlife.

Wildlife-dependent recreational and educational activities would be expanded and improved on- and off-refuge. The building of an education and visitor center would allow visitors a quality experience and provide a focus point for public use on the refuge.

All hunting and fishing seasons would continue as presently managed. Support facilities, including parking, for hunting and fishing opportunities would be improved.

The review and comment period is 30 calendar days commencing with publication of this Notice of Availability in the **Federal Register**. After the review and comment period for this Draft CCP/EA, all comments will be analyzed and considered by the Service. All comments received from individuals on the Environmental Assessment become part of the official public record. Requests for such comments will be handled in accordance with the Freedom of Information Act, the Council on Environmental Quality's NEPA regulations (40 CFR 1506.6(f)) and other Service and Departmental policies and procedures.

Dated: May 26, 2005.

Ron Shupe,

Regional Director, Region 6, Denver, CO.

[FR Doc. 05-12061 Filed 6-17-05; 8:45 am]

BILLING CODE 4310-55-P

DEPARTMENT OF THE INTERIOR

National Park Service

Notice of Inventory Completion: Mississippi Department of Archives and History, Historic Preservation Division, Jackson, MS

AGENCY: National Park Service, Interior.

ACTION: Notice.

Notice is here given in accordance with the Native American Graves Protection and Repatriation Act (NAGPRA), 25 U.S.C. 3003, of the completion of an inventory of human remains and associated funerary objects in the possession of the Mississippi Department of Archives and History, Historic Preservation Division, Jackson, MS. The human remains and associated funerary objects were removed from Lee County, MS.

This notice is published as part of the National Park Service's administrative responsibilities under NAGPRA, 25 U.S.C. 3003 (d)(3). The determinations in this notice are the sole responsibility of the museum, institution, or Federal agency that has control of the Native American human remains and associated funerary objects. The National Park Service is not responsible for the determinations in this notice.

A detailed assessment of the human remains was made by the Mississippi Department of Archives and History, Historic Preservation Division professional staff in consultation with representatives of the Chickasaw Nation, Oklahoma.

In the summer of 1937, human remains representing a minimum of one individual were removed from the Alston-Wilson site (MLe14), by Moreau Chambers, an archeologist with the Mississippi Department of Archives and History, as part of an ongoing survey and legally authorized excavation of Chickasaw sites in Lee County, MS. The excavation and survey were undertaken to study Chickasaw culture and find the location of the Battle of Ackia as part of the process for establishing Ackia Battleground National Monument. No known individual was identified. The two associated funerary objects are one bent cuprous metal band (sheet brass ring) found around the bone fragment and one pottery sherd.

The Alston-Wilson site, now better known as MLe14 because of later excavations by Jesse Jennings in 1939 on behalf of the National Park Service, has a major occupation dating to A.D. 1730-1750. Archeological evidence found at the Alston-Wilson site suggests that this site was part of a major historic

Chickasaw village. In the 1730s, there were two major villages in the vicinity of the Alston-Wilson site that were occupied by the Chickasaw: Tchichatala and Falatchao. Tchichatala was a major Chickasaw village. Falatchao was a "white mother" town meaning it was both a "white" town (or a peace town, as opposed to a "red" war town) and a "mother" town from which other towns emerged (Hudson 1976: 238-239).

Both Tchichatala and Falatchao are recognized in historical documents as being occupied by the Chickasaw. However, because of the fluid nature of Chickasaw village occupation, it is difficult to identify the specific boundaries of historic Chickasaw villages. Therefore, based on the archeological evidence that the site was part of a major Chickasaw village and at that time both villages were in the area, the Alston-Wilson site is most probably part of either the site of the village of Tchichatala or Falatchao. (Atkinson 1985, 2004; Brad Lieb, personal communication 2004; Cook et al. 1980; Jennings 1941; Johnson et al. 2004). Furthermore, based on historical evidence that Lee County, MS, where the Alston-Wilson site is located, was occupied by the Chickasaw until their removal to Oklahoma from 1837 until 1850, the site is probably Chickasaw. The Chickasaws are represented by the present-day Chickasaw Nation, Oklahoma.

Officials of the Mississippi Department of Archives and History, Historic Preservation Division have determined that, pursuant to 25 U.S.C. 3001 (9-10), the human remains described above represent the physical remains of one individual of Native American ancestry. Officials of the Mississippi Department of Archives and History, Historic Preservation Division also have determined that, pursuant to 25 U.S.C. 3001 (3)(A), the two objects described above are reasonably believed to have been placed with or near individual human remains at the time of death or later as part of the death rite or ceremony. Lastly, officials of the Mississippi Department of Archives and History, Historic Preservation Division have determined that, pursuant to 25 U.S.C. 3001 (2), there is a relationship of shared group identity that can be reasonably traced between the Native American human remains and associated funerary objects and the Chickasaw Nation, Oklahoma.

Representatives of any other Indian tribe that believes itself to be culturally affiliated with the human remains and associated funerary objects should contact Pamela D. Edwards, Curator of Archaeological Collections, Mississippi

Department of Archives and History, Historic Preservation Division, P.O. Box 571, Jackson, MS 39205, telephone (601) 576-6940, before July 20, 2005. Repatriation of the human remains and associated funerary objects to the Chickasaw Nation, Oklahoma may proceed after that date if no additional claimants come forward.

The Mississippi Department of Archives and History, Historic Preservation Division is responsible for notifying the Chickasaw Nation, Oklahoma that this notice has been published.

Dated: May 31, 2005.

Sherry Hutt,

Manager, National NAGPRA Program.

[FR Doc. 05-12029 Filed 6-17-05; 8:45 am]

BILLING CODE 4312-50-S

DEPARTMENT OF THE INTERIOR

Bureau of Reclamation

Lower Yuba River Accord, Yuba County, CA

AGENCY: Bureau of Reclamation, Interior.

ACTION: Notice of Intent to prepare an Environmental Impact Statement/Environmental Impact Report (EIS/EIR) and to hold public scoping meetings.

SUMMARY: Pursuant to the National Environmental Policy Act (NEPA) of 1969, as amended, the Bureau of Reclamation (Reclamation) proposes to participate and serve as the lead agency under NEPA in the preparation of a joint EIS/EIR on the Lower Yuba River Accord (Yuba Accord). The Yuba County Water Agency (YCWA), a local public water agency, is proposing the project and will serve as the lead agency under the California Environmental Quality Act (CEQA). The purpose of the Yuba Accord is to resolve instream flow issues associated with operation of the Yuba River Development Project (Yuba Project) in a way that protects and enhances lower Yuba River fisheries and local water-supply reliability, while providing revenues for local flood-control and water-supply projects, water for the CALFED Program to use for protection and restoration of Sacramento-San Joaquin Delta (Delta) fisheries, and improvements in state-wide water supply management, including supplemental water for the Central Valley Project (CVP) and the State Water Project (SWP).

This notice is published in accordance with NEPA regulations found in 40 CFR 1501.7. The purpose of this notice is to obtain suggestions and

information from other agencies and the public on the scope of issues to be addressed in the EIS/EIR. A similar notice is being published by YCWA in accordance with CEQA. Comments and participation in the scoping process are encouraged.

DATES: Four public scoping meetings will be held on the following dates:

- July 19, 2005–1 p.m., Sacramento, CA
- July 19, 2005–6:30 p.m., Sacramento, CA
- July 20, 2005–1 p.m., Marysville, CA
- July 20, 2005–6:30 p.m., Marysville, CA

ADDRESSES: The public scoping meeting locations are:

- Sacramento—Doubletree Hotel, 2001 Point West Way, Sacramento, CA
- Marysville—Yuba County Government Center, 915 8th Street, Marysville, CA

Written comments on the scope of the Yuba Accord or issues to be addressed in the EIR/EIS must be received no later than August 4, 2005. Send written comments to Mary Grim, Bureau of Reclamation, 2800 Cottage Way, MP-400, Sacramento, CA 95825. Grim, Bureau of Reclamation, 2800 Cottage Way, MP-400, Sacramento, CA 95825.

FOR FURTHER INFORMATION CONTACT: Mary Grim, Environmental Specialist, Reclamation, at the above address; telephone number 916-978-5204.

SUPPLEMENTARY INFORMATION: YCWA is a public agency created and existing pursuant to the provisions of the Yuba County Water Agency Act of 1959. YCWA owns and operates the Yuba Project, which includes New Bullards Bar Dam and Reservoir on the North Yuba River. YCWA operates the Yuba Project in accordance with a Federal Energy Regulatory Commission License, flood control rules promulgated by the U.S. Army Corps of Engineers, state water rights permit terms, and an agreement with the California Department of Fish and Game (CDFG) for instream flows.

In March of 1991, CDFG released a “Lower Yuba River Fisheries Management Plan”, which contained recommendations regarding fishery protection and enhancement measures in the lower 24-mile section of the Yuba River. CDFG requested that the State Water Resources Control Board (SWRCB) consider modifying YCWA’s water rights permits to implement the recommendations contained in CDFG’s Plan. Based on CDFG’s request, and to address various allegations raised by a coalition of non-governmental fisheries organizations (NGOs) against several

water agencies in 1989 filings, the SWRCB initiated a proceeding to consider fishery protection and water right issues on the lower Yuba River in early 1992.

The SWRCB held hearings on these issues in 1992 and 2000. The SWRCB adopted Water Rights Decision 1644 (D-1644) on March 1, 2001. D-1644 established new instream flow requirements for the lower Yuba River in YCWA’s water right permits, required YCWA to take actions to address potential concerns regarding water temperatures for Chinook salmon and steelhead, and required studies and consultation on various other issues.

YCWA, several local water districts in Yuba County, and a collective of fisheries NGOs all initiated legal actions challenging D-1644 on a variety of issues. After considering some new evidence, the court remanded D-1644 to the SWRCB for reconsideration in light of the new evidence. After a brief hearing in 2003, the SWRCB issued Revised Water Rights Decision 1644 (RD-1644), which contains only minor changes from D-1644. The same parties that had challenged D-1644 then initiated new legal proceedings challenging RD-1644 on most of the same issues.

Since RD-1644 was issued, the parties to the litigation and the state and Federal fisheries agencies have been engaged in a collaborative, interest-based initiative to try to resolve the flow and other fisheries issues on the lower Yuba River. The potential settlement has become known as the Yuba Accord. If implemented, the Yuba Accord would resolve issues associated with operation of the Yuba Project in a way that would protect and enhance lower Yuba River fisheries, protect local water supply reliability, provide revenues for local flood-control and water-supply projects, provide water for protection and restoration of Delta fisheries, and increase state-wide water supplies.

The Yuba Accord would include three major elements:

- The first element would be an agreement (Yuba Accord Fisheries Agreement) between YCWA, CDFG and the collective of NGOs, with the U.S. Fish and Wildlife Service (USFWS) and the National Oceanic and Atmospheric Administration, National Marine Fisheries Service supporting the agreement. Under the Yuba Accord Fisheries Agreement, YCWA would revise the operation of the Yuba Project to provide higher flows in the lower Yuba River to protect and enhance fisheries and to increase downstream water supplies.

- The second element of the Yuba Accord would be an agreement between YCWA and water districts within Yuba County (Yuba Accord Conjunctive Use Agreement) for the implementation of a comprehensive program of conjunctive use of surface water and groundwater supplies and actions to improve water use efficiencies.

- The third element would be an agreement between YCWA and the California Department of Water Resources (DWR) and Reclamation (Yuba Accord Transfer Agreement), which would put water released from the Yuba Project to beneficial uses through the Environmental Water Account and in the CVP and SWP service areas.

All three of these agreements would need to be in place for the Yuba Accord to be implemented.

The draft EIS/EIR will analyze the adverse and beneficial effects of implementing the Yuba Accord on surface water hydrology, groundwater hydrology, water supply, hydropower, flood control, water quality, fisheries, wildlife, vegetation, special-status species, recreation, visual, cultural and Indian Trust Assets, air quality, land use, socioeconomic, growth inducement, and environmental justice resources and conditions. Alternatives to be evaluated in the draft EIS/EIR include the No Action Alternative, Proposed Action Alternative, and others as appropriate. In addition, the draft EIS/EIR will address the cumulative impacts of implementation of the Yuba Accord in conjunction with other past, present, and reasonably foreseeable actions.

Our practice is to make comments on a Notice of Intent, including names and home addresses of respondents, available for public review. Individual respondents may request that we withhold their home addresses from public disclosure, which we will honor to the extent allowable by law. There also may be circumstances in which we would withhold a respondent's identity from public disclosure, as allowable by law. If you wish us to withhold your name and/or address, you must state this prominently at the beginning of your comment. We will make all submissions from organizations or businesses, and from individuals identifying themselves as representatives or officials of organizations or businesses, available for public disclosure in their entirety.

Dated: June 10, 2005.

Frank Michny,

Regional Environmental Officer, Mid-Pacific Region.

[FR Doc. 05-11975 Filed 6-17-05; 8:45 am]

BILLING CODE 4310-MN-P

INTERNATIONAL TRADE COMMISSION

[Inv. No. 337-TA-542]

In the Matter of Certain DVD/CD Players and Recorders, Color Television Receivers and Monitors, and Components Thereof; Notice of Investigation

AGENCY: U.S. International Trade Commission.

ACTION: Institution of investigation pursuant to 19 U.S.C. 1337.

SUMMARY: Notice is hereby given that a complaint was filed with the U.S. International Trade Commission on May 17, 2005, under section 337 of the Tariff Act of 1930, as amended, 19 U.S.C. 1337, on behalf of BenQ Corporation of Taiwan and BenQ America Corporation of Irvine, California. The complaint alleges violations of section 337 in the importation into the United States, the sale for importation, and the sale within the United States after importation of certain DVD/CD players and recorders, color television receivers and monitors, and components thereof, by reason of infringement of claims 7-11 and 13-15 of U.S. Patent No. 5,270,821 and claims 1, 2, 4, and 5 of U.S. Patent No. 6,683,842. The complaint further alleges that an industry in the United States exists as required by subsection (a)(3) of section 337.

The complainants request that the Commission institute an investigation and, after the investigation, issue an exclusion order and a cease and desist order.

ADDRESSES: The complaint, except for any confidential information contained therein, is available for inspection during official business hours (8:45 a.m. to 5:15 p.m.) in the Office of the Secretary, U.S. International Trade Commission, 500 E Street, SW., Room 112, Washington, DC 20436, telephone 202-205-2000. Hearing impaired individuals are advised that information on this matter can be obtained by contacting the Commission's TDD terminal on 202-205-1810. Persons with mobility impairment who will need special assistance in gaining access to the Commission should contact the Office of the Secretary at 202-205-2000. General information concerning the

Commission may be obtained by accessing its Internet server (<http://www.usitc.gov>). The public record for this investigation may be reviewed on the Commission's electronic docket (EDIS) at <http://edis.usitc.gov>.

FOR FURTHER INFORMATION CONTACT: Jay H. Reiziss, Esq., Office of Unfair Import Investigations, U.S. International Trade Commission, telephone 202-205-2579.

Authority: The authority for institution of this investigation is contained in section 337 of the Tariff Act of 1930, as amended, and in section 210.10 of the Commission's Rules of Practice and Procedures, 19 CFR 210.10(2004).

Scope of Investigation: Having considered the complaint, the U.S. International Trade Commission, on June 13, 2005, *ordered that*—

(1) Pursuant to subsection (b) of section 337 of the Tariff Act of 1930, as amended, an investigation be instituted to determine whether there is a violation of subsection (a)(1)(B) of section 337 in the importation into the United States, the sale for importation, or the sale within the United States after importation of certain DVD/CD players or recorders, color television receivers or monitors, or components thereof, by reason of infringement of one or more of claims 7-11 and 13-15 of U.S. Patent No. 5,270,821, or claims 1, 2, 4, or 5 of U.S. Patent No. 6,683,842, and whether an industry in the United States exists as required by subsection (a)(3) of section 337.

(2) For the purpose of the investigation so instituted, the following are hereby named as parties upon which this notice of investigation shall be served:

(a) The complainants are—

BenQ Corporation, 157 Shan-Ying Rd, Gueishan, Taoyuan 333, Taiwan.

BenQ Corporation, 53 Discovery, Irvine, California 92618.

(b) The respondent is the following company alleged to be in violation of section 337, and is the party upon which the complaint is to be served:

Thomson Inc., 10330 N. Meridian Street, Indianapolis, IN 46290-1024.

(c) Jay H. Reiziss, Esq., Office of Unfair Import Investigations, U.S. International Trade Commission, 500 E Street, SW., Suite 401, Washington, DC 20436, who shall be the Commission investigative attorney, party to this investigation; and

For the investigation so instituted, the Honorable Robert L. Barton, Jr. is designated as the presiding administrative law judge.

A response to the complaint and the notice of investigation must be

submitted by the named respondent in accordance with section 210.13 of the Commission's Rules of Practice and Procedure, 19 CFR 210.13. Pursuant to 19 CFR 201.16(d) and 210.13(a), such response will be considered by the Commission if received no later than 20 days after the date of service by the Commission of the complaint and the notice of investigation. Extensions of time for submitting the response to the complaint will not be granted unless good cause therefor is shown.

Failure of the respondent to file a timely response to each allegation in the complaint and in this notice may be deemed to constitute a waiver of the right to appear and contest the allegations of the complaint and to authorize the administrative law judge and the Commission, without further notice to the respondent, to find the facts to be as alleged in the complaint and this notice and to enter both an initial determination and a final determination containing such findings, and may result in the issuance of an exclusion order or cease and desist orders or both directed against the respondent.

By order of the Commission.

Issued: June 14, 2005.

Marilyn R. Abbott,

Secretary to the Commission.

[FR Doc. 05-12037 Filed 6-17-05; 8:45 am]

BILLING CODE 7020-02-M

DEPARTMENT OF JUSTICE

Antitrust Division

Notice Pursuant to the National Cooperative Research and Production Act of 1993—Die Products Consortium

Notice is hereby given that, on May 26, 2005, pursuant to Section 6(a) of the National Cooperative Research and Production Act of 1993, 15 U.S.C. 4301 *et seq.* ("the Act"), Die Products Consortium ("DPC") has filed written notifications simultaneously with the Attorney General and the Federal Trade Commission disclosing changes in its membership. The notifications were filed for the purpose of extending the Act's provisions limiting the recovery of antitrust plaintiffs to actual damages under specified circumstances. Specifically, Infineon Technologies AG, Munich, GERMANY; and Philips Semiconductors, Inc., San Jose, CA have been added as parties to this venture. Also, National Semiconductor Corporation, Santa Clara, CA; and August Technology, Bloomington, MN have withdrawn as parties to this venture. The following member has

changed its name: Motorola SPS to Freescale Semiconductor, Inc., Austin, TX.

No other changes have been made in either the membership or planned activity of the group research project. Membership in this group research project remains open, and DPC intends to file additional written notification disclosing all changes in membership.

On November 15, 1999, DPC filed its original notification pursuant to Section 6(a) of the Act. The Department of Justice published a notice in the **Federal Register** pursuant to Section 6(b) of the Act on June 26, 2000 (65 FR 39429).

The last notification was filed with the Department on May 19, 2003. A notice was published in the **Federal Register** pursuant to Section 6(b) of the Act on June 10, 2003 (68 FR 34644).

Dorothy B. Fountain,

Deputy Director of Operations, Antitrust Division.

[FR Doc. 05-12047 Filed 6-17-05; 8:45 am]

BILLING CODE 4410-11-M

DEPARTMENT OF JUSTICE

Antitrust Division

Notice Pursuant to the National Cooperative Research and Production Act of 1993—Truck Essential Power Systems Efficiency Improvements for Medium Duty Trucks

Notice is hereby given that, on May 12, 2005, pursuant to Section 6(a) of the National Cooperative Research and Production Act of 1993, 15 U.S.C. 4301 *et seq.* ("the Act"), Truck Essential Power Systems Efficiency Improvements for Medium Duty Trucks ("TEPS2") has filed written notifications simultaneously with the Attorney General and the Federal Trade Commission disclosing (1) the identities of the parties to the venture and (2) the nature and objectives of the venture. The notifications were filed for the purpose of invoking the Act's provisions limiting the recovery of antitrust plaintiffs to actual damages under specified circumstances.

Pursuant to Section 6(b) of the Act, the identities of the parties to the venture are: Caterpillar Inc., Mossville, IL; Emerson Electric Co., St. Louis, MO; Engineered Machine Products, Inc., Escanaba, MI; and Dana Corporation, Ottawa Lake, MI. The general area of TEPS2's planned activity is to focus on the optimization of sophisticated power management strategies of various electrically driven engine accessories to

replace the typical arrangement of belt/gear driven components.

Dorothy B. Fountain,

Deputy Director of Operations, Antitrust Division.

[FR Doc. 05-12048 Filed 6-17-05; 8:45 am]

BILLING CODE 4410-11-M

DEPARTMENT OF JUSTICE

Antitrust Division

Notice Pursuant to the National Cooperative Research and Production Act of 1993—Utah Health Information Network

Notice is hereby given that, on June 1, 2005, pursuant to Section 6(a) of the National Cooperative Research and Production Act of 1993, 15 U.S.C. 4301 *et seq.* ("the Act"), Utah Health Information Network ("UHIN") has filed written notifications simultaneously with the Attorney General and the Federal Trade Commission disclosing (1) the name and principal place of business of the standards development organization and (2) the nature and scope of its standards development activities. The notifications were filed for the purpose of invoking the Act's provisions limiting the recovery of antitrust plaintiffs to actual damages under specified circumstances.

Pursuant to Section 6(b) of the Act, the name and principal place of business of the standards development organization is: Utah Health Information Network, Murray, UT. The nature and scope of UHIN's standards development activities are: to develop, maintain and promote voluntary, consensus-based interoperability standards related to the exchange of electronic healthcare data, including but not limited to, standardization of data sets, specifications, network architecture, requirements, services, methods and procedures that apply to facilities, personnel, systems, service providers, operators, and others handling healthcare information.

Dorothy B. Fountain,

Deputy Director of Operations, Antitrust Division.

[FR Doc. 05-12049 Filed 6-17-05; 8:45 am]

BILLING CODE 4410-11-M

DEPARTMENT OF LABOR**Employment and Training
Administration**

[TA-W-57,078]

**Allied Bias Products; Jersey City, NJ;
Notice of Termination of Investigation**

Pursuant to section 221 of the Trade Act of 1974, as amended, an investigation was initiated on April 29, 2005, in response to a petition filed by a state agency representative on behalf of workers at Allied Bias Products, Jersey City, New Jersey.

The petitioner has requested that the petition be withdrawn. Consequently, further investigation would serve no purpose the investigation has been terminated.

Signed at Washington, DC, this 2nd day of June, 2005.

Linda G. Poole,

*Certifying Officer, Division of Trade
Adjustment Assistance.*

[FR Doc. E5-3171 Filed 6-17-05; 8:45 am]

BILLING CODE 4510-30-P

DEPARTMENT OF LABOR**Employment and Training
Administration**

[TA-W-56,871]

**Block Corporation; Amory, MS; Notice
of Negative Determination Regarding
Application for Reconsideration**

By application of May 16, 2005 a petitioner requested administrative reconsideration of the Department's negative determination regarding eligibility for workers and former workers of the subject firm to apply for Trade Adjustment Assistance (TAA) and Alternative Trade Adjustment Assistance (ATAA). The denial notice was signed on April 27, 2005 and published in the **Federal Register** on May 16, 2005 (70 FR 25859).

Pursuant to 29 CFR 90.18(c) reconsideration may be granted under the following circumstances:

(1) If it appears on the basis of facts not previously considered that the determination complained of was erroneous;

(2) If it appears that the determination complained of was based on a mistake in the determination of facts not previously considered; or

(3) If in the opinion of the Certifying Officer, a misinterpretation of facts or of the law justified reconsideration of the decision.

The TAA petition, filed on behalf of workers at Block Corporation, Amory,

Mississippi engaged in production of men's trouser samples was denied because the "contributed importantly" group eligibility requirement of section 222 of the Trade Act of 1974 was not met, nor was there a shift in production from that firm to a foreign country. The investigation revealed that the preponderance in employment declines is attributed to a domestic shift in production of men's trouser samples.

In the request for reconsideration, the petitioner alleges that the layoffs at the subject firm are attributable to an increase in imports of men's trouser samples.

A company official was contacted regarding the above allegations. The company official confirmed what was revealed during the initial investigation. In particular, the official stated that even though the subject firm has been importing a small portion of men's trouser samples, domestic production of men's trouser samples have not declined during the relevant time period. Furthermore, the official stated that the same amount of pant samples that were produced at the subject facility are now produced at another domestic facility.

Conclusion

After review of the application and investigative findings, I conclude that there has been no error or misinterpretation of the law or of the facts which would justify reconsideration of the Department of Labor's prior decision. Accordingly, the application is denied.

Signed at Washington, DC, this 7th day of June, 2005.

Elliott S. Kushner,

*Certifying Officer, Division of Trade
Adjustment Assistance.*

[FR Doc. E5-3168 Filed 6-17-05; 8:45 am]

BILLING CODE 4510-30-P

DEPARTMENT OF LABOR**Employment and Training
Administration**

[TA-W-57,158]

**Creo Americas, Inc., U.S.
Headquarters, a Subsidiary of Creo,
Inc.; Billerica, MA; Located in New
York, NY; Notice of Termination of
Investigation**

Pursuant to section 221 of the Trade Act of 1974, as amended, an investigation was initiated on May 12, 2005 in response to a worker petition filed by a State agency representative on behalf of workers at Creo Americas, Inc.,

U.S. Headquarters, a subsidiary of Creo, Inc., New York, New York.

The petitioning group of workers is covered by an active certification, (TA-W-55,607A) which expires on April 5, 2007. Consequently, further investigation in this case would serve no purpose, and the investigation has been terminated.

Signed at Washington, DC this 1st day of June 2005.

Elliott S. Kushner,

*Certifying Officer, Division of Trade
Adjustment Assistance.*

[FR Doc. E5-3173 Filed 6-17-05; 8:45 am]

BILLING CODE 4510-30-P

DEPARTMENT OF LABOR**Employment and Training
Administration**

[TA-W-56,674]

**CTS Corporation; CTS
Communications Components, Inc.,
Including On-Site Leased Workers of
Excel and Spherion Albuquerque, New
Mexico; Dismissal of Application for
Reconsideration**

Pursuant to 29 CFR 90.18(C) an application for administrative reconsideration was filed with the Director of the Division of Trade Adjustment Assistance for workers at CTS Corporation, CTS Communications Components, Inc., including on-site leased workers of Excel and Spherion, Albuquerque, New Mexico. The application contained no new substantial information which would bear importantly on the Department's determination. Therefore, dismissal of the application was issued.

TA-W-56,674; CTS Corporation, CTS Communications Components, Inc., Including On-Site Leased Workers of Excel and Spherion, Albuquerque, New Mexico (June 7, 2005).

Signed at Washington, DC, this 8th day of June 2005.

Timothy Sullivan,

*Director, Division of Trade Adjustment
Assistance.*

[FR Doc. E5-3165 Filed 6-17-05; 8:45 am]

BILLING CODE 4510-30-P

DEPARTMENT OF LABOR**Employment and Training
Administration**

[TA-W-57,090]

Hewlett-Packard Company, Imaging & Printing Group—Technology Platforms Division; Corvallis, Oregon; Notice of Termination of Investigation

Pursuant to section 221 of the Trade Act of 1974, an investigation was initiated on May 3, 2005 in response to a worker petition which was filed on behalf of workers at Hewlett-Packard Company, Imaging & Printing Group—Technology Platforms Division, Corvallis, Oregon.

The petitioning group of workers is covered by an active certification, (TA-W-56,696) which expires on May 7, 2007. Consequently, further investigation in this case would serve no purpose, and the investigation has been terminated.

Signed in Washington, DC, this 2nd day of June, 2005.

Elliott S. Kushner,

Certifying Officer, Division of Trade Adjustment Assistance.

[FR Doc. E5-3172 Filed 6-17-05; 8:45 am]

BILLING CODE 4510-30-P

DEPARTMENT OF LABOR**Employment and Training
Administration**

[TA-W-57,040]

Higgins Seaming; Rainsville, AL; Notice of Termination of Investigation

Pursuant to section 221 of the Trade Act of 1974, an investigation was initiated on April 25, 2005 in response to petition filed on behalf of workers at Higgins Seaming, Rainsville, Alabama.

The petition regarding the investigation has been deemed invalid. Consequently, the investigation has been terminated.

Signed in Washington, DC, this 1st day of June, 2005.

Elliott S. Kushner,

Certifying Officer, Division of Trade Adjustment Assistance.

[FR Doc. E5-3170 Filed 6-17-05; 8:45 am]

BILLING CODE 4510-30-P

DEPARTMENT OF LABOR**Employment and Training
Administration**

[TA-W-56,842]

KUS, Inc., a/k/a Karl Schmidt Unisia, Inc.; Fort Wayne, IN; Dismissal of Application for Reconsideration

Pursuant to 29 CFR 90.18(C) an application for administrative reconsideration was filed with the Director of the Division of Trade Adjustment Assistance for workers at KUS, Inc., a/k/a Karl Schmidt Unisia, Inc., Fort Wayne, Indiana. The application contained no new substantial information which would bear importantly on the Department's determination. Therefore, dismissal of the application was issued.

TA-W-56,842; KUS, Inc., a/k/a Karl Schmidt Unisia, Inc., Fort Wayne, Indiana (June 7, 2005).

Signed at Washington, DC, this 8th day of June 2005.

Timothy Sullivan,

Director, Division of Trade Adjustment Assistance.

[FR Doc. E5-3167 Filed 6-17-05; 8:45 am]

BILLING CODE 4510-30-P

DEPARTMENT OF LABOR**Employment and Training
Administration**

[TA-W-56,688]

Lands' End, a Subsidiary of Sears Roebuck and Company, Business Outfitters Cad Operations, Dodgeville, WI; Notice of Affirmative Determination Regarding Application for Reconsideration

By application of April 24, 2005, petitioners requested administrative reconsideration of the Department's negative determination regarding eligibility for workers and former workers of the subject firm to apply for Trade Adjustment Assistance (TAA) and Alternative Trade Adjustment Assistance (ATAA). The determination was signed on March 25, 2005 and the Notice of determination was published in the **Federal Register** on May 2, 2005 (70 FR 22710).

The Department carefully reviewed the petitioners' request for reconsideration and has determined that the Department will conduct further investigation based on new information provided.

Conclusion

After careful review of the application, I conclude that the claim is of sufficient weight to justify reconsideration of the Department of Labor's prior decision. The application is, therefore, granted.

Signed at Washington, DC, this 6th day of June 2005.

Elliott S. Kushner,

Certifying Officer, Division of Trade Adjustment Assistance.

[FR Doc. E5-3166 Filed 6-17-05; 8:45 am]

BILLING CODE 4510-30-P

DEPARTMENT OF LABOR**Employment and Training
Administration**

[TA-W-55,574]

Philips Lighting Company, a Subsidiary of Royal Philips Electronics, Paris, TX; Notice of Revised Determination of Alternative Trade Adjustment Assistance on Remand

On March 9, 2005, the U.S. Court of International Trade (USCIT) granted the Department of Labor's motion for a voluntary remand in *Former Employees of Philips Lighting Company v. United States Secretary of Labor*, Court No. 04-00651.

On September 29, 2004, the Department issued a determination for the September 2, 2004 petition filed on behalf of workers at the subject company. The workers were certified as eligible to apply for Trade Adjustment Assistance (TAA) and ineligible to apply for Alternative Trade Adjustment Assistance (ATAA). The Notice of determination was published in the **Federal Register** on October 26, 2004 (69 FR 62462).

By letter dated December 19, 2004, the International Brotherhood of Electrical Workers, Local 1794, appealed to the USCIT for administrative reconsideration of the Department's negative determination regarding the subject worker group's eligibility to apply for ATAA and requested an extension of the certification period to include workers who were separated prior to September 2, 2003 (one year prior to the petition date).

Pursuant to the USCIT's March 9, 2005 order, the Department has conducted an investigation on remand to determine the workers' eligibility to apply for ATAA certification.

The group eligibility certification criteria for the ATAA program under

section 246 the Trade Act of 1974, as amended, established that the Department must determine whether a significant number of workers in the workers' firm are 50 years of age or older, whether the workers in the workers' firm possess skills that are not easily transferable, and whether the competitive conditions within the workers' industry are adverse.

During the initial determination, the Department determined that at least five percent of the workforce at the subject firm is at least fifty years of age, that workers of the subject firm possess skills that are easily transferable, and that competitive conditions within the industry are adverse.

During the remand investigation, the Department obtained new information, including information that shows that the average salary level of workers with similar skills as the worker group declined significantly during the investigatory period, that manufacturing employment opportunities within a 120-mile radius of the subject firm are scarce, and that existing manufacturing companies in the county which the subject company is located are not seeking hiring workers with those skills which are possessed by the subject worker group.

The Department cannot grant the petitioner's request to extend the certification period to include workers who were separated prior to September 2, 2003 because the applicable regulation, 29 CFR 90.16(e)(1), states that exclusions from coverage of a certification of eligibility include any worker whose last total or partial separation from the subject firm occurred more than one year before the date of the petition.

Conclusion

After careful review of the facts, I conclude that the requirements of section 246 of the Trade Act of 1974, as amended, have been met for workers at the subject firm. In accordance with the provisions of the Act, I make the following certification:

All workers of Philips Lighting Company, A Subsidiary of Royal Philips Electronics, Paris, Texas, who became totally or partially separated from employment on or after September 2, 2003 through September 29, 2006, are eligible to apply for adjustment assistance under section 223 of the Trade Act of 1974, and are also eligible to apply for alternative trade adjustment assistance under section 246 of the Trade Act of 1974.

Signed at Washington, DC, this 7th day of June 2005.

Elliott S. Kushner,

Certifying Officer, Division of Trade Adjustment Assistance.

[FR Doc. E5-3164 Filed 6-17-05; 8:45 am]

BILLING CODE 4510-30-P

DEPARTMENT OF LABOR

Employment and Training Administration

[TA-W-57,031]

Pilling/Weck, a Subsidiary of Teleflex, Including On-Site Leased Workers of Aerotek and Acsys; Horsham, PA; Amended Certification Regarding Eligibility To Apply for Worker Adjustment Assistance and Negative Determination Regarding Eligibility To Apply for Alternative Trade Adjustment Assistance

In accordance with section 223 of the Trade Act of 1974 (19 U.S.C. 2273) the Department of Labor issued a Certification of Eligibility to Apply for Worker Adjustment Assistance and a Negative Determination Regarding Eligibility to Apply for Alternative Trade Adjustment Assistance on May 26, 2005, applicable to workers of Pilling/Weck, a subsidiary of Teleflex, including on-site leased workers of Aerotek, Horsham, Pennsylvania. The notice will be published soon in the **Federal Register**.

At the request of the State agency, the Department reviewed the certification for workers of the subject firm. New information shows that leased workers of Acsys were employed on-site at the Horsham, Pennsylvania location of Pilling/Weck, a subsidiary of Teleflex.

Based on these findings, the Department is amending this certification to include leased workers of Acsys working at Pilling/Weck, a subsidiary of Teleflex, Horsham, Pennsylvania.

The intent of the Department's certification is to include all workers employed at Pilling/Weck, a subsidiary of Teleflex who were adversely affected by a shift in production to South Korea, Pakistan and Germany.

The amended notice applicable to TA-W-57,031 is hereby issued as follows:

"All workers of Pilling/Weck, a subsidiary of Teleflex, including on-site leased workers of Aerotek and Acsys, Horsham, Pennsylvania who became totally or partially separated from employment on or after April 20, 2004, through May 26, 2007, are eligible to apply for adjustment assistance under section 223 of the Trade Act of 1974.

I further determine that all workers of Pilling/Weck, a subsidiary of Teleflex, including on-site leased workers of Aerotek and Acsys, Horsham, Pennsylvania are denied eligibility to apply for alternative trade adjustment assistance under section 246 of the Trade Act of 1974."

Signed at Washington, DC this 7th day of June 2005.

Richard Church,

Certifying Officer, Division of Trade Adjustment Assistance.

[FR Doc. E5-3169 Filed 6-17-05; 8:45 am]

BILLING CODE 4510-30-P

MORRIS K. UDALL SCHOLARSHIP AND EXCELLENCE IN NATIONAL ENVIRONMENTAL POLICY FOUNDATION

The United States Institute for Environmental Conflict Resolution; Agency Information Collection Activities; Extension of Currently Approved Information Collection; Comment Request

AGENCY: Morris K. Udall Scholarship and Excellence in National Environmental Policy Foundation, U.S. Institute for Environmental Conflict Resolution

ACTION: Notice; U.S. Institute for Environmental Conflict Resolution application for the National Roster of Environmental Dispute Resolution and Consensus Building Professionals.

SUMMARY: In compliance with the Paperwork Reduction Act and supporting regulations, this document announces that the U.S. Institute for Environmental Conflict Resolution (the Institute), part of the Morris K. Udall Foundation, is planning to submit to the Office of Management and Budget (OMB) a request for an extension for the currently approved information collection (ICR), OMB control Number 3320-0008: Application for the National Roster of Environmental Dispute Resolution and Consensus Building Professionals ("National Roster of ECR Practitioners" or "roster"), currently operating pursuant to OMB clearance issued October 17, 2002 and which expires October 31, 2005. Before submitting the extension to OMB for review and approval, the Institute is soliciting comments regarding the information collection (see section C. below entitled "Questions to Consider in Making Comments"). This document provides information on the continuing need for the Roster of ECR Practitioners Application and the information recorded in the application.

DATES: Comments must be submitted on or before August 19, 2005.

ADDRESSES: Direct comments to Joan C. Calcagno, Roster Manager, U.S. Institute for Environmental Conflict Resolution, 130 South Scott Ave., Tucson, Arizona 85701. Fax: 520-670-5530. Phone: 520-670-5299. E-mail: roster@ecr.gov.

FOR FURTHER INFORMATION CONTACT:

Direct questions and requests for information, including copies of the ICR, to Joan C. Calcagno, Roster Manager, U.S. Institute for Environmental Conflict Resolution, 130 South Scott Ave., Tucson, Arizona 85701. Fax: 520-670-5530. Phone: 520-670-5299. E-mail: roster@ecr.gov.

SUPPLEMENTARY INFORMATION:

A. Title for the Collection of Information

Application for National Roster of Environmental Dispute Resolution and Consensus Building Professionals ("National Roster of ECR Practitioners").

B. Potentially Affected Persons

You are potentially affected by this action if you are a dispute resolution or consensus building professional in the environmental or natural resources field who wishes to be listed on the National Roster of Environmental Dispute Resolution and Consensus Building Professionals.

C. Questions To Consider in Making Comments

The U.S. Institute for Environmental Conflict Resolution requests your comments to any of the following questions related to collecting information for the extension of the Application for the National Roster of ECR Practitioners:

(1) Is the continued use of the application ("collection of information") necessary for the proper performance of the functions of the agency, including whether the information has practical utility?

(2) Is the agency's estimate of the time spent completing the application ("burden of the proposed collection of information") accurate, including the validity of the methodology and assumptions used?

(3) Can you suggest ways to enhance the quality, utility, and clarity of the information collected?

(4) Can you suggest ways to minimize the burden of the collection of information on those who are to respond, including through the use of appropriate automated electronic, mechanical, or other technological collection techniques or other forms of information technology?

D. Abstract

The U.S. Institute for Environmental Conflict Resolution plans to continue collecting information from environmental dispute resolution and consensus building neutral professionals who desire to become members of the National Roster of ECR Practitioners, from which the Institute and those involved in environmental, natural resource, or public lands disputes may locate providers of neutral services. Responses to the collection of information (the application) are voluntary, but required to obtain a benefit (listing on the National Roster of Environmental Dispute Resolution and Consensus Building Professionals.) An agency may not conduct or sponsor, and a person is not required to respond to, a collection of information unless it displays a currently valid OMB control number.

Background Information: U.S. Institute for Environmental Conflict Resolution.

The U.S. Institute for Environmental Conflict Resolution was created in 1998 by the Environmental Policy and Conflict Resolution Act (Pub. L. 105-156). The U. S. Institute is a federal program established by the U. S. Congress to assist parties in resolving environmental, natural resource, and public lands conflicts. The Institute is part of the Morris K. Udall Foundation, an independent federal agency of the executive branch overseen by a board of trustees appointed by the President. The Institute serves as an impartial, non-partisan institution providing professional expertise, services, and resources to all parties involved in such disputes, regardless of who initiates or pays for assistance. The Institute helps parties determine whether collaborative problem solving is appropriate for specific environmental conflicts, how and when to bring all the parties to the table, and whether a third-party facilitator or mediator might be helpful in assisting the parties in their efforts to reach consensus or to resolve the conflict. In addition, the Institute maintains the National Roster of ECR Practitioners, a roster of qualified facilitators and mediators with substantial experience in environmental conflict resolution, and can help parties in selecting an appropriate neutral. The Institute accomplishes most of its work by partnering, contracting with, or referral to, experienced practitioners.

The Need for and Use of the Information Collected in the Application for the Roster of ECR Practitioners

Roster of ECR Practitioners Application: The application can be viewed on-line from the Institute's Web site: <http://www.ecr.gov> (simply register in the application system to access and review an application). A hardcopy application may also be obtained from the Institute for those without web access (see **FOR FURTHER INFORMATION CONTACT** above).

Background Information: The information collected in the application for the National Roster of ECR Practitioners is the basis for an on-line database, searchable by a combination of 10 criteria designed to locate appropriate practitioners by matching desired characteristics with the information in the application. The application was first available in September 1999 and remains available on a continuous basis. The Roster of ECR Practitioners first became operational in February 2000 with 60 members and currently includes over 255 members from 41 states, the District of Columbia, and 2 Canadian provinces. They represent a broad cross-section of professional backgrounds and a broad distribution of case experience across 42 types of case issues. Each member has documented experience which meets the roster entry criteria, and each has experience as a neutral in some or all of the following: Mediation, facilitation, consensus building, process design, conflict assessment, system design, neutral evaluation/fact finding, superfund allocation, and/or regulatory negotiation.

The specific entry criteria and applicable definitions are available from the Institute's Web site: <http://ecr.gov/roster.htm>. Generally stated, the entry criteria require that an applicant has:

(1) Served as the lead neutral in a collaborative process (e.g., mediation, consensus building, conflict assessment) for at least 200 case hours in two to ten environmental cases, and

(2) Accumulated a total of 60 points across three categories: Additional case experience and complex case experience; experience as a trainer or trainee; and substantive work/volunteer/educational experience in fields related to Alternative Dispute Resolution/Environmental Conflict Resolution, such as law, science, public administration.

Use of the National Roster of ECR Practitioners: The roster search and referral service has been accessible through the Institute since February 2000. The Institute uses the roster

(specifically the information collected in the application) as a resource when making referrals to those searching for neutral ECR professionals with specific experience, backgrounds, or expertise (external referrals). The Institute also uses the roster as a resource when locating appropriate ECR neutral professionals with whom to partner/sub-contract for projects in which the Institute is involved (internal referrals), pursuant to the Institute's statutory direction to work with practitioners located near the dispute, when practicable and appropriate. The roster referral system is enhanced through cooperation with existing programs and networks of environmental dispute-resolution and consensus-building practitioners familiar with the issues in their respective states and regions.

In October 2004, the roster became directly available on the web to anyone interested in locating ECR practitioners. Since then anyone interested in locating ECR practitioners can contact the Institute for a referral through the Roster Manager or register in the search system and search the roster themselves. The Roster Manager remains available to assist searchers in getting the best use of the roster search and to provide advice about next steps.

The Environmental Protection Agency (EPA) Alternative Dispute Resolution (ADR) personnel have had direct, electronic access to search the roster since February 2000. The Department of Interior Office of Collaborative Action and Dispute Resolution and ADR personnel from various DOI bureaus have had direct access since November 2002. Roster Members have also had direct access to the search since May 2004. Statistics related to the use of the roster since February 2000 can be found in the Roster Program Overview, available from: <http://ecr.gov/roster/prosumm.html>.

Federal agencies are not required to select from the roster. Professionals not on the roster remain fully eligible to serve as ECR practitioners in disputes involving federal agencies. Finally, being listed on the roster does not guarantee additional work for the practitioner.

Development and Need for the National Roster of ECR Practitioners: The roster was developed with the support of the Environmental Protection Agency. Based on a 1997 study concerning the potential of a national roster of qualified practitioners, EPA decided to support the development of such a roster through the Institute.

To develop the project, the EPA and the Institute brought together a work group consisting of EPA dispute

resolution professionals and contracting officers, state dispute resolution officials, private dispute resolution practitioners and academics. Informed in part by ideas from this group, the EPA and the Institute proposed roster entry qualifications and draft application, which were published in the **Federal Register** in November 1998. Before the entry criteria and application were finalized, the comments received in response to the **Federal Register** notice were reviewed. Outreach continued through meetings and newsletter articles, as well as individual communications to professional associations, state and federal government agencies, dispute resolution firms, individual practitioners, professional associations of attorneys, environmental and citizen groups.

The roster was created, and continues to be needed, for several reasons. The use of Alternative Dispute Resolution in the environmental and public policy arena has grown markedly over the last two decades. In this context, ADR processes now include techniques ranging from conflict prevention, such as consensus building and facilitation of public policy dialogues, to specific dispute resolution through assisted negotiations and mediation. The number of environmental conflict resolution (ECR) practitioners has grown as the field has gained prominence and professionals from a variety of disciplines have become attracted to its advantages and opportunities.

An essential step in any dispute resolution process occurs when parties select a practitioner. Parties making the selection rightfully expect that the practitioner will be qualified to provide the service sought and has experience and style matched well to the nature of the issues and to the parties. Thus, the National Roster of ECR Practitioners is designed to advance the interests of the growing field of dispute resolution, reflect the evolving standards of best practice, and help direct the expenditure of public funds for quality services.

In fifteen years of using ADR, before the creation of the National Roster of ECR Practitioners, EPA found that parties to a dispute or controversy generated a list of desired characteristics, such as experience with specific types of issues, cases or disputes, location, and other factors, that they would use in an attempt to identify the right person to assist them. Locating practitioners meeting these criteria was often a "hit-or-miss" experience depending on the resources, available time, and experience of the

parties with locating appropriate neutrals.

Although the EPA operates a national service contract that manages major cases through a list of experienced providers, it is limited in scope and membership, and as a consequence it can be burdensome to use to identify neutrals for small or localized cases. Most other Federal agencies have no vehicle or information available to assist in this important first step to conducting a good dispute resolution process.

More specifically, the National Roster of ECR Practitioners is necessary for the proper performance of the Institute's goals: to resolve Federal environmental disputes in a timely and constructive manner; to increase the appropriate use of environmental conflict resolution; to improve the ability of Federal agencies and other interested parties to engage in ECR effectively; and to promote collaborative problem-solving and consensus-building during the design and implementation of Federal environmental policies so as to prevent and reduce the incidence of future environmental disputes.

In addition, the U.S. Institute's enabling legislation directs the Institute to work with practitioners located near the conflict whenever practical. Consistent with this mandate, the Institute must be able to identify appropriate experienced dispute resolution and consensus building professionals in an efficient manner.

Finally, the Administrative Dispute Resolution (ADR) Act of 1996 (5 U.S.C. 571 *et seq.*) authorizes the Federal government to contract with dispute resolution professionals (*e.g.*, facilitators or mediators) to assist it and other parties to disputes in reaching an agreement, settlement, or consensus. The ADR Act authorizes the government to take steps to make identifying and contracting with neutrals easier (*cf.* 5 U.S.C. 573(c)).

Thus, the goal of the National Roster of ECR Practitioners and the referral system is to improve access to qualified environmental dispute resolution and consensus building professionals for the Institute and others sponsoring or engaging in environmental conflict resolution processes. The roster expedites the identification of appropriate professionals, shortens the time needed to complete contracting documents, and helps refer parties to practitioners, particularly practitioners in the locale of the dispute.

Preliminary feedback from users of the roster search system indicates that they would recommend the roster as a primary source for locating ECR practitioners; the roster increases the

likelihood of selecting appropriate practitioners; and the roster is a systematic and efficient way to identify practitioners.

The roster and the referral system provide an efficient, credible and user-friendly source from which to systematically identify experienced environmental neutral professionals; increase the use of collaborative processes by providing a useful tool for locating appropriate practitioners; and provide users with a detailed Practitioner Profiles, reflecting information contained in the application, to be used as a helpful first step in the process of selecting an appropriate neutral.

E. Burden Statement

The application compiles data available from the resumes of dispute resolution and consensus building professionals into a format that is standardized for efficient and fair eligibility review, database searches, and retrievals. A professional needs to complete the form only one time. Once the application is approved, the roster member has continual access to his or her on-line account to update information, on a voluntary basis. The burden includes time spent to review instructions, review resume information, and enter the information in the form.

Likely Respondents: Environmental dispute resolution and consensus building professionals (new respondents); existing roster members (for updating)

Proposed Frequency of Response: One, with voluntary updates approximately once per year.

Estimated Number of New Respondents (first extension year): 30.

Estimated Number of Existing Respondents—for updating (first extension year): 125.

Estimated Number of New Respondents (per year for succeeding year): 30.

Estimated Number of Existing Respondents—for updating (per year for succeeding year): 125.

Respondent Time Burden Estimates:
Estimated Time per New Response: 150 minutes (2.5 hours).

Estimated Number of Updates (per year): 1, for 125 existing respondents.

Estimated Time for Update: 15 minutes.

Estimated Total First Extension Year Burden: 4500 minutes (75 hours) (30 new respondents); 1875 minutes (31.25 hours) (125 updates).

Estimated Total Subsequent Year Annual Burden: 4500 minutes (75

hours) (30 new respondents); 1875 minutes (31.25 hours) (125 updates).

Respondent Cost Burden Estimates (at \$150 per hour): No capital or start-up costs.

Estimated Cost per Respondent (first extension year): \$375 (new respondents); \$38 (updates).

Estimated Cost per Respondent (subsequent year): \$375 (new respondents); \$38 (updates).

Estimated Total First Extension Year Burden: \$11,250 (new respondents); \$4,750 (updates).

Estimated Total Subsequent Year Annual Burden: \$11,250 (new respondents); \$4,750 (updates).

Burden means the total time, effort, or financial resources expended by persons to generate, maintain, retain, or disclose or provide information to or for a Federal agency. This includes the time needed to review instructions; develop, acquire, install, and utilize technology and systems for the purpose of collecting, validating, and verifying information, processing and maintaining information, and disclosing and providing information and transmitting information.

(Authority: 20 U.S.C. 5601–5609)

Dated the 14th day of June 2005.

Christopher L. Helms,

Executive Director, Morris K. Udall Scholarship and Excellence in National Environmental Policy Foundation, and Federal Register Liaison Officer.

[FR Doc. 05–12073 Filed 6–17–05; 8:45 am]

BILLING CODE 6820–FN–P

NATIONAL SCIENCE FOUNDATION

Agency Information Collection Activities: Comment Request

AGENCY: National Science Foundation.

ACTION: Submission for OMB review; comment request.

SUMMARY: The National Science Foundation (NSF) has submitted the following information collection requirement to OMB for review and clearance under the Paperwork Reduction Act of 1995, Pub. L. 104–13. This is the second notice for the public comment; the first was published in the **Federal Register** at 70 FR 18430, and one comment was received. NSF is forwarding the proposed renewal submission to the Office of Management and Budget (OMB) for clearance simultaneously with the publication of this second notice. Comments regarding (a) whether the collection of information is necessary for the proper performance of the functions of the agency, including

whether the information will have practical utility; (b) the accuracy of the agency's estimate of burden including the validity of the methodology and assumptions used; (c) ways to enhance the quality, utility and clarity of the information to be collected; (d) ways to minimize the burden of the collection of information on those who are to respond, including through the use of appropriate automated, electronic, mechanical, or other technological collection techniques or other forms of information technology should be addressed to: Office of Information and Regulatory Affairs of OMB, Attention: Desk Officer for National Science Foundation, 725–17th Street, NW., Room 10235, Washington, DC 20503, and to Suzanne H. Plimpton, Reports Clearance Officer, National Science Foundation, 4201 Wilson Boulevard, Suite 295, Arlington, Virginia 22230 or send e-mail to splimpto@nsf.gov. Comments regarding these information collections are best assured of having their full effect if received within 30 days of this notification. Copies of the submission(s) may be obtained by calling 703–292–7556.

NSF may not conduct or sponsor a collection of information unless the collection of information displays a currently valid OMB control number and the agency informs potential persons who are to respond to the collection of information that such persons are not required to respond to the collection of information unless it displays a currently valid OMB control number.

SUPPLEMENTARY INFORMATION:

Comment: On April 11, 2005, we published in the Federal Register (70 FR 18430) a 60-day notice of our intent to request renewal of this information collection authority from OMB. In that notice, we solicited public comments for 60 days ending June 10, 2005. On comment was received from the public notice. The comment came from B. Sachau of Floram Park, NJ, via e-mail on April 18, 2005. Ms. Sachau objected to the information collection. Ms. Sachau suggested that NSF discontinue funding education-related projects and leave education to the state and local authorities and possibly to the Department of Education. Ms. Sachau had no specific suggestions for altering the data collection plans other than to discontinue or “sunset” them entirely.

Response: We responded to Ms. Sachau on April 27, 2005, stating that we could not comment on the political issues raised in her e-mail. We described the program and noted that NSF takes seriously its mission as

directed by Congress and the Office of Management and Budget (OMB) to monitor and evaluate awards made under the Math and Science Partnership (MSP) program. On April 28, 2005 we received a reply from Ms. Sachau requesting her "comments stand for the public record. NSF believes that because the comment does not pertain to the collection of information on the required forms for which NSF is seeking OMB approval, NSF is proceeding with the clearance request.

Title: The Evaluation of NSF's Math and Science Partnerships (MSP) Program.

OMB Control Number: 3145-0199.

Abstract

This document has been prepared to support the clearance of data collection instruments to be used in the evaluation of the Math and Science Partnership (MSP) Program. The goals for the program are to (1) ensure that all K-12 students have access to, are prepared for, and are encouraged to participate and succeed in challenging curricula and advanced mathematics and science courses; (2) enhance the quality, quantity, and diversity of the K-12 mathematics and science teacher workforce; and (3) develop evidence-based outcomes that contribute to our understanding of how students effectively learn mathematics and science. The motivational force for realizing these goals is the formation of partnerships between institutions of higher education (IHEs) and K-12 school districts. The role of IHE content faculty is the cornerstone of this intervention. In fact, it is the rigorous involvement of science, mathematics, and engineering faculty—and the expectation that both IHEs and K-12 school systems will be transformed—that distinguishes MSP from other education reform efforts.

The components of the overall MSP portfolio include active projects whose initial awards were made in prior MSP competitions, as well as those to be awarded in the current MSP competition: (1) Comprehensive Partnerships that implement change in mathematics and/or science educational practices in both higher education institutions and in schools and school districts, resulting in improved student achievement across the K-12 continuum; (2) Targeted Partnerships that focus on improved K-12 student achievement in a narrower grade range or disciplinary focus within mathematics or science; (3) Institute Partnerships: Teacher Institutes for the 21st Century that focus on the development of mathematics and

science teachers as school-and district-based intellectual leaders and master teachers; and (4) Research, Evaluation and Technical Assistance (RETA) projects that build and enhance large-scale research and evaluation capacity for all MSP awardees and provide them with tools and assistance in the implementation and evaluation of their work.

The MSP online monitoring system, comprised of four web-based surveys, will collect a common core of data about each component of MSP. The web application for MSP will be developed with a modular design that incorporates templates and self-contained code modules for rapid development and ease of modification. A downloadable version will also be available for respondents who prefer a paper version that they can mail or fax to Westat. Information from the system will be used to document the Partnerships' annual progress toward meeting the Key features of MSP projects, such as developing partnerships between IHEs and local school districts, increasing teacher quality, quantity, and diversity, providing challenging courses and curricula, utilizing evidence-based design and outcome measures, and implementing institutional change and sustainability.

Expected Respondents

The expected respondents are principal investigators of all projects; STEM and education faculty members and administrators who participated in MSP; school districts and IHEs that are partners in an MSP project.

Burden on the Public

We estimate that the total number of annual respondents will be 1,848. The estimated annual response burden is 34,382.

Dated: June 15, 2005.

Suzanne H. Plimpton,

Reports Clearance Officer, National Science Foundation.

[FR Doc. 05-12094 Filed 6-17-05; 8:45 am]

BILLING CODE 7555-01-M

NUCLEAR REGULATORY COMMISSION

[Docket Nos. STN 50-454, STN 50-455, STN 50-456, and STN 50-457]

Exelon Generation Company, LLC; Notice of Issuance of Amendments to Facility Operating Licenses; Correction

AGENCY: Nuclear Regulatory Commission.

ACTION: Notice of Issuance; correction.

SUMMARY: This document corrects a notice appearing in the **Federal Register** on June 7, 2005 (70 FR 33222), that incorrectly stated the date of issuance of amendments deleting the technical specification requirements related to hydrogen recombiners as May 19, 2005. The correct date of issuance of the amendments is May 26, 2005.

FOR FURTHER INFORMATION CONTACT:

George F. Dick, Office of Nuclear Reactor Regulation, U.S. Nuclear Regulatory Commission, Washington, DC 20555-0001; telephone (301) 415-3019, e-mail: GFD@nrc.gov.

SUPPLEMENTARY INFORMATION: On page 33222, in the second column, in the entry for Exelon Generation Company, LLC, Docket Nos. STN 50-454 and STN 50-455, Byron Station, Unit Nos. 1 and 2, Ogle County, Illinois; Docket Nos. STN 50-456 and STN 50-457, Braidwood Station, Unit Nos. 1 and 2, Will County, Illinois, the date of issuance is corrected to read from "May 19, 2005" to "May 26, 2005".

Dated in Rockville, Maryland, this 9th day of June 2005.

For the Nuclear Regulatory Commission.

George F. Dick, Sr.,

Project Manager, Section 2, Project Directorate III, Division of Licensing Project Management, Office of Nuclear Reactor Regulation.

[FR Doc. E5-3176 Filed 6-17-05; 8:45 am]

BILLING CODE 7590-01-P

NUCLEAR REGULATORY COMMISSION

[Docket No. 70-3103]

Safety Evaluation Report for the Proposed National Enrichment Facility in Lea County, NM, NUREG-1827; Notice of Availability

AGENCY: United States Nuclear Regulatory Commission.

ACTION: Notice of availability of Safety Evaluation Report.

SUMMARY: Notice is hereby given that the Nuclear Regulatory Commission (NRC) has issued a Safety Evaluation Report (SER) for the Louisiana Energy Services (LES) license application, dated December 12, 2003, docketed on January 30, 2004, and as revised by letters dated February 27, 2004, July 30, 2004, September 30, 2004, April 22, 2005, April 29, 2005, and May 25, 2005, for the possession and use of source, byproduct, and special nuclear materials at its proposed National Enrichment Facility (NEF) in Lea County, New Mexico.

The SER discusses the results of the safety review performed by NRC staff in

the following areas: General information, organization and administration, Integrated Safety Analysis (ISA) and ISA Summary, radiation protection, nuclear criticality safety, chemical process safety, fire safety, emergency management, environmental protection, decommissioning, management measures, materials control and accountability, and physical protection.

The NRC is planning to conduct a public meeting in New Mexico to provide an overview of the staff's safety review and to address any comments or questions relating to the issuance of the SER.

SUPPLEMENTARY INFORMATION: The SER (NUREG-1827) is available for inspection and copying for a fee at the NRC's Public Document Room, located at One White Flint North, Public File Area O1 F21, 11555 Rockville Pike (first floor), Rockville, Maryland. The Public Document Room is open from 7:45 a.m. to 4:15 p.m., Monday through Friday, except on Federal holidays.

Publicly available records will be accessible electronically from the Agency-wide Documents Access and Management Systems (ADAMS) Public Electronic Reading Room, and on the Internet at the NRC Web site, <http://www.nrc.gov/NRC/ADAMS/index.html>. Persons who do not have access to ADAMS or who encounter problems in accessing the documents located in ADAMS, should contact the NRC Public Document Room Reference staff by telephone at 1-800-397-4209, 301-415-4737, or by e-mail to pdr@nrc.gov.

FOR FURTHER INFORMATION CONTACT: Timothy C. Johnson, Mail Stop: T-8F42, Special Projects Branch, Division of Fuel Cycle Safety and Safeguards, Office of Nuclear Material Safety and Safeguards, U.S. Nuclear Regulatory Commission, Washington, DC 20555-0001, Telephone: (301) 415-7299, and e-mail: tcj@nrc.gov.

Dated at Rockville, Maryland, this 14th day of June, 2005.

For the Nuclear Regulatory Commission.

James W. Clifford,

Acting Branch Chief, Special Projects Branch, Division of Fuel Cycle Safety and Safeguards, Office of Nuclear Material Safety and Safeguards.

[FR Doc. E5-3174 Filed 6-17-05; 8:45 am]

BILLING CODE 7590-01-P

NUCLEAR REGULATORY COMMISSION

[Docket No. 50-331]

Nuclear Management Company; Notice of Partial Denial of Amendment to Facility Operating License and Opportunity for Hearing

The U.S. Nuclear Regulatory Commission (NRC or the Commission) has denied a request by Nuclear Management Company, LLC (the licensee) for an amendment to Facility Operating License No. DPR-49 issued to the licensee for operation of the Duane Arnold Energy Center, located in Linn County, Iowa.

Notice of Consideration of Issuance of this amendment was published in the **Federal Register** on April 13, 2004 (69 FR 19571).

The purpose of the licensee's amendment request was to revise the Technical Specifications (TS) to reflect adoption of Technical Specifications Task Force (TSTF) traveler numbers 264, 273, 284, and 299.

The NRC staff has concluded that the portion of the licensee's request to adopt TSTF-264 and revise TS 3.3.1.1 cannot be granted. The licensee was notified of the Commission's denial of the proposed change by a letter dated June 14, 2005.

By 30 days from the date of publication of this notice in the **Federal Register**, the licensee may demand a hearing with respect to the denial described above. Any person whose interest may be affected by this proceeding may file a written petition for leave to intervene pursuant to the requirements of Title 10 of the Code of Federal Regulations Section 2.309.

A request for hearing or petition for leave to intervene must be filed with the Secretary of the Commission, U.S. Nuclear Regulatory Commission, Washington, DC 20555-0001 Attention: Rulemakings and Adjudications Staff, or may be delivered to the Commission's Public Document Room (PDR), located at One White Flint North, Public File Area O1 F21, 11555 Rockville Pike (first floor), Rockville, Maryland, by the above date. Because of continuing disruptions in delivery to mail to U.S. Government offices, it is requested that petitions for leave to intervene and requests for hearing be transmitted to the Secretary of the Commission either by means of facsimile transmission to 301-415-1101 or by e-mail to hearingdocket@nrc.gov. A copy of any petitions should also be sent to the Office of the General Counsel, U.S. Nuclear Regulatory Commission, Washington, DC 20555-0001, and

because of continuing disruptions in delivery of mail to the U.S. Government offices, it is requested that copies be transmitted either by means of facsimile transmission to 301-415-3725 or by e-mail to OGCMailCenter@nrc.gov. A copy of any petitions should also be sent to Bradley D. Jackson, Esq., Foley and Lardner, P.O. Box 1497, Madison, WI 53701-1497, attorney for the licensee.

For further details with respect to this action, see (1) the application for amendment dated January 28, 2004, as supplemented by letter dated November 22, 2004, and (2) the Commission's letter to the licensee dated June 14, 2005.

Documents may be examined, and/or copied for a fee, at the NRC's PDR, located at One White Flint North, 11555 Rockville Pike (first floor), Rockville, Maryland, and will be accessible electronically through the Agencywide Documents Access and Management System's Public Electronic Reading Room link at the NRC Web site <http://www.nrc.gov/reading-rm/adams.html>. Persons who do not have access to ADAMS or who encounter problems in accessing documents located in ADAMS, should contact the NRC PDR Reference staff by telephone at 1-800-397-4209, 301-415-4737, or by e-mail to pdr@nrc.gov.

Dated at Rockville, Maryland, this 14th day of June 2005.

For the Nuclear Regulatory Commission.

Ho K. Nieh,

Acting Director, Project Directorate III-1, Division of Licensing Project Management, Office of Nuclear Reactor Regulation.

[FR Doc. E5-3177 Filed 6-17-05; 8:45 am]

BILLING CODE 7590-01-P

NUCLEAR REGULATORY COMMISSION

[Docket Nos: (Redacted), License Nos: (Redacted), EA (Redacted)]

In the Matter of Certain Power Reactor Licensees and Research Reactor Licensees Who Transport Spent Nuclear Fuel; Order Modifying License (Effective Immediately)

I.

The licensees identified in Attachment 1 to this Order have been issued a specific license by the U.S. Nuclear Regulatory Commission (NRC or Commission) authorizing the possession of spent nuclear fuel and a general license authorizing the transportation of spent nuclear fuel [in a transportation package approved by the Commission] in accordance with the Atomic Energy Act of 1954, as amended,

and 10 CFR Parts 50 and 71. This Order is being issued to all such licensees who transport spent nuclear fuel.

Commission regulations for the shipment of spent nuclear fuel at 10 CFR 73.37(a) require these licensees to maintain a physical protection system that meets the requirements contained in 10 CFR 73.37(b), (c), (d), and (e).

II.

On September 11, 2001, terrorists simultaneously attacked targets in New York, NY, and Washington, DC, utilizing large commercial aircraft as weapons. In response to the attacks and intelligence information subsequently obtained, the Commission issued a number of Safeguards and Threat Advisories to its licensees in order to strengthen licensees' capabilities and readiness to respond to a potential attack on a nuclear facility or regulated activity. The Commission has also communicated with other Federal, State and local government agencies and industry representatives to discuss and evaluate the current threat environment in order to assess the adequacy of security measures at licensed facilities. In addition, the Commission has been conducting a comprehensive review of its safeguards and security programs and requirements.

As a result of its consideration of current safeguards and security plan requirements, as well as a review of information provided by the intelligence community, the Commission has determined that certain additional security measures are required to be implemented by licensees as prudent, interim measures, to address the current threat environment in a consistent manner. Therefore, the Commission is imposing requirements, as set forth in Attachment 2 of this Order, on all licensees identified in Attachment 1 of this Order.¹ These additional security requirements, which supplement existing regulatory requirements, will provide the Commission with reasonable assurance that the common defense and security continue to be adequately protected in the current threat environment. These requirements will remain in effect until the Commission determines otherwise.

The Commission recognizes that licensees may have already initiated many of the measures set forth in Attachment 2 to this Order in response to previously issued Safeguards and Threat Advisories or on their own. It is also recognized that some measures may

not be possible or necessary for all shipments of spent nuclear fuel, or may need to be tailored to accommodate the licensees' specific circumstances to achieve the intended objectives and avoid any unforeseen effect on the safe transport of spent nuclear fuel.

Although the additional security measures implemented by licensees in response to the Safeguards and Threat Advisories have been adequate to provide reasonable assurance of adequate protection of common defense and security, in light of the current threat environment, the Commission concludes that the security measures must be embodied in an Order consistent with the established regulatory framework. In order to provide assurance that licensees are implementing prudent measures to achieve a consistent level of protection to address the current threat environment, all licenses identified in Attachment 1 to this Order shall be modified to include the requirements identified in Attachment 2 to this Order. In addition, pursuant to 10 CFR 2.202, and in light of the common defense and security matters identified above which warrant the issuance of this Order, the Commission finds that the public health, safety, and interest require that this Order be immediately effective.

III.

Accordingly, pursuant to Sections 53, 103, 104, 161b, 161i, 161o, 182 and 186 of the Atomic Energy Act of 1954, as amended, and the Commission's regulations in 10 CFR 2.202 and 10 CFR Parts 50 and 71, *it is hereby ordered*, effective immediately, that all licenses identified in attachment 1 to this order are modified as follows:

A. All licensees shall, notwithstanding the provisions of any Commission regulation or license to the contrary, comply with the requirements described in Attachment 2 to this Order except to the extent that a more stringent requirement is set forth in the licensee's security plan. The licensees shall immediately start implementation of the requirements in Attachment 2 to the Order and shall complete implementation by July 10, 2005, unless otherwise specified in Attachment 2, or before the first shipment after July 10, 2005, whichever is earlier.

B. 1. All licensees shall, within twenty (20) days of the date of this Order, notify the Commission, (1) if they are unable to comply with any of the requirements described in Attachment 2, (2) if compliance with any of the requirements is unnecessary in their specific circumstances, or (3) if implementation of any of the

requirements would cause the licensee to be in violation of the provisions of any Commission regulation or the facility license. The notification shall provide the licensee's justification for seeking relief from or variation of any specific requirement.

2. Any licensee that considers that implementation of any of the requirements described in Attachment 2 to this Order would adversely impact the safe transport of spent fuel must notify the Commission, within twenty (20) days of this Order, of the adverse safety impact, the basis for its determination that the requirement has an adverse safety impact, and either a proposal for achieving the same objectives specified in the Attachment 2 requirement in question, or a schedule for modifying the activity to address the adverse safety condition. If neither approach is appropriate, the licensee must supplement its response to Condition B1 of this Order to identify the condition as a requirement with which it cannot comply, with attendant justifications as required in Condition B1.

C. 1. All licensees shall, within twenty (20) days of the date of this Order, submit to the Commission a schedule for achieving compliance with each requirement described in Attachment 2.

2. All licensees shall report to the Commission when they have achieved full compliance with the requirements described in Attachment 2.

D. Notwithstanding any provisions of the Commission's regulations to the contrary, all measures implemented or actions taken in response to this Order shall be maintained until the Commission determines otherwise.

Licensee responses to Conditions B1, B2, C1, and C2 above, shall be submitted to the NRC to the attention of the Director, Office of Nuclear Reactor Regulation under 10 CFR 50.4. In addition, licensee submittals that contain Safeguards Information shall be properly marked and handled in accordance with 10 CFR 73.21.

The Director, Office of Nuclear Reactor Regulation, may, in writing, relax or rescind any of the above conditions upon demonstration by the licensee of good cause.

IV.

In accordance with 10 CFR 2.202, the licensee must, and any other person adversely affected by this Order may, submit an answer to this Order, and may request a hearing on this Order, within twenty (20) days of the date of this Order. Where good cause is shown, consideration will be given to extending

¹ Attachments 1 and 2 contain SAFEGUARDS INFORMATION and will not be released to the public.

the time to request a hearing. A request for extension of time in which to submit an answer or request a hearing must be made in writing to the Director, Office of Nuclear Reactor Regulation, U.S. Nuclear Regulatory Commission, Washington, DC 20555-0001, and include a statement of good cause for the extension. The answer may consent to this Order. Unless the answer consents to this Order, the answer shall, in writing and under oath or affirmation, specifically set forth the matters of fact and law on which the licensee or other person adversely affected relies and the reasons as to why the Order should not have been issued. Any answer or request for a hearing shall be submitted to the Secretary, Office of the Secretary of the Commission, U.S. Nuclear Regulatory Commission, ATTN: Rulemakings and Adjudications Staff, Washington, DC 20555-0001. Copies also shall be sent to the Director, Office of Nuclear Reactor Regulation, U.S. Nuclear Regulatory Commission, Washington, DC 20555-0001, to the Assistant General Counsel for Materials Litigation and Enforcement at the same address; to the Regional Administrator for NRC Region I, II, III, or IV, as appropriate for the specific facility; and to the licensee if the answer or hearing request is by a person other than the licensee. Because of potential disruptions in delivery of mail to United States Government offices, it is requested that answers and requests for hearing be transmitted to the Secretary of the Commission either by means of facsimile transmission to (301) 415-1101 or by e-mail to hearingdocket@nrc.gov, and also to the Office of the General Counsel either by means of facsimile transmission to (301) 415-3725 or by e-mail to OGCMailCenter@nrc.gov. If a person other than the Licensee requests a hearing, that person shall set forth with particularity the manner in which his interest is adversely affected by this Order and shall address the criteria set forth in 10 CFR 2.714(d).

If a hearing is requested by the licensee or a person whose interest is adversely affected, the Commission will issue an Order designating the time and place of any hearing. If a hearing is held, the issue to be considered at such hearing shall be whether this Order should be sustained.

Pursuant to 10 CFR 2.202(c)(2)(i), the licensee may, in addition to demanding a hearing, at the time the answer is filed or sooner, move the presiding officer to set aside the immediate effectiveness of the Order on the ground that the Order, including the need for immediate effectiveness, is not based on adequate

evidence but on mere suspicion, unfounded allegations, or error.

In the absence of any request for hearing, or written approval of an extension of time in which to request a hearing, the provisions specified in Section III above shall be final twenty (20) days from the date of this Order without further order or proceedings. If an extension of time for requesting a hearing has been approved, the provisions specified in Section III shall be final when the extension expires if a hearing request has not been received.

An answer or a request for hearing shall not stay the immediate effectiveness of this order.

Dated at Rockville, Maryland, this 10th day of June 2005.

For the Nuclear Regulatory Commission.

J.E. Dyer,

Director, Office of Nuclear Reactor Regulation.

[FR Doc. E5-3175 Filed 6-17-05; 8:45 am]

BILLING CODE 7590-01-P

SECURITIES AND EXCHANGE COMMISSION

[File No. 1-05901]

Issuer Delisting; Notice of Application of Fab Industries, Inc. To Withdraw Its Common Stock, \$.20 Par Value, From Listing and Registration on the American Stock Exchange LLC

June 13, 2005.

On May 31, 2005, Fab Industries, Inc., a Delaware corporation ("Issuer"), filed an application with the Securities and Exchange Commission ("Commission"), pursuant to Section 12(d) of the Securities Exchange Act of 1934 ("Act")¹ and Rule 12d2-2(d) thereunder,² to withdraw its common stock, \$.20 par value ("Security"), from listing and registration on the American Stock Exchange LLC ("Amex").

On May 23, 2005, the Board of Directors ("Board") of the Issuer approved a resolution to withdraw the Security from listing and registration on Amex. On March 1, 2002, the Board adopted resolutions authorizing, subject to stockholder approval, the sale of the Issuer's business pursuant to a Plan of Liquidation and Dissolution ("Plan"). The Issuer's stockholders approved the Plan at the Issuer's annual meeting on May 30, 2002. Pursuant to the Plan, the Issuer was required to transfer its assets and liabilities to a liquidating trust on May 30, 2005. The liquidating trust will succeed to all of the Issuer's remaining

assets and liabilities. Upon the transfer to the liquidating trust, the Plan required that the Issuer file a certificate of dissolution with the State of Delaware. The Issuer stated that the last day of trading in the Security on the Amex was May 27, 2005.

The Issuer stated in its application that it has met the requirements of Amex Rule 18 by complying with all applicable laws in effect in the state of Delaware, in which it is incorporated, and provided written notice of withdrawal to Amex.

The Issuer's application relates solely to withdrawal of the Security from listing on the Amex and from registration under Section 12(b) of the Act,³ and shall not affect its obligation to be registered under Section 12(g) of the Act.⁴

Any interested person may, on or before July 6, 2005, comment on the facts bearing upon whether the application has been made in accordance with the rules of Amex, and what terms, if any, should be imposed by the Commission for the protection of investors. All comment letters may be submitted by either of the following methods:

Electronic Comments

- Use the Commission's Internet comment form (<http://www.sec.gov/rules/delist.shtml>); or
- Send an e-mail to rule-comments@sec.gov. Please include the File Number 1-05901 or;

Paper Comments

- Send paper comments in triplicate to Jonathan G. Katz, Secretary, Securities and Exchange Commission, Station Place, 100 F Street, NE., Washington, DC 20549-9303.

All submissions should refer to File Number 1-05901. This file number should be included on the subject line if e-mail is used. To help us process and review your comments more efficiently, please use only one method. The Commission will post all comments on the Commission's Internet Web site (<http://www.sec.gov/rules/delist.shtml>). Comments are also available for public inspection and copying in the Commission's Public Reference Room. All comments received will be posted without change; we do not edit personal identifying information from submissions. You should submit only information that you wish to make available publicly.

The Commission, based on the information submitted to it, will issue

¹ 15 U.S.C. 78l(d).

² 17 CFR 240.12d2-2(d).

³ 15 U.S.C. 78l(b).

⁴ 15 U.S.C. 78l(g).

an order granting the application after the date mentioned above, unless the Commission determines to order a hearing on the matter.

For the Commission, by the Division of Market Regulation, pursuant to delegated authority.⁵

Jonathan G. Katz,

Secretary.

[FR Doc. E5-3152 Filed 6-17-05; 8:45 am]

BILLING CODE 8010-01-P

SECURITIES AND EXCHANGE COMMISSION

[File No. 1-00225]

Issuer Delisting; Notice of Application of Kimberly-Clark Corporation To Withdraw Its Common Stock, \$1.25 Par Value, Per Share, From Listing and Registration on the Pacific Exchange, Inc.

June 14, 2005.

On May 25, 2005, Kimberly-Clark Corporation, a Delaware corporation ("Issuer"), filed an application with the Securities and Exchange Commission ("Commission"), pursuant to Section 12(d) of the Securities Exchange Act of 1934 ("Act")¹ and Rule 12d2-2(d) thereunder,² to withdraw its common stock, \$1.25 par value ("Security"), from listing and registration on the Pacific Exchange, Inc. ("PCX").

The Board of Directors ("the Board") of the Issuer approved a resolution on April 28, 2005 to withdraw the Security from listing on PCX. The Board stated that the reason it decided to withdraw the Security from PCX is that the benefits of continued listing on PCX do not outweigh the incremental cost of the listing fees and administrative burden associated with listing on the exchange. In addition, the Board stated that it is desirable for the Issuer to remove its Security from PCX listing because of the modest volume of trading in the Security on PCX does not justify the expense and administrative time associated with remaining listed on PCX. The Issuer stated that the Security is currently traded on the New York Stock Exchange, Inc. ("NYSE"), the Issuer's principal listing exchange, and on the Chicago Stock Exchange, Inc. ("CHX").

The Issuer stated in its application that it has complied with applicable rules of PCX Rule 5.4(b) by providing PCX with the required documents governing the withdrawal of securities from listing and registration on PCX.

The Issuer's application relates solely to the withdrawal of the Securities from listing on PCX and shall not affect its continued listing on CHX and NYSE or its obligation to be registered under Section 12(b) of the Act.³

Any interested person may, on or before July 11, 2005 comment on the facts bearing upon whether the application has been made in accordance with the rules of PCX, and what terms, if any, should be imposed by the Commission for the protection of investors. All comment letters may be submitted by either of the following methods:

Electronic Comments

- Send an e-mail to rule-comments@sec.gov. Please include the File Number 1-00225 or;

Paper Comments

- Send paper comments in triplicate to Jonathan G. Katz, Secretary, Securities and Exchange Commission, 100 F Street, NE., Washington, DC 20549-9303.

All submissions should refer to File Number 1-00225. This file number should be included on the subject line if e-mail is used. To help us process and review your comments more efficiently, please use only one method. The Commission will post all comments on the Commission's Internet Web site (<http://www.sec.gov/rules/delist.shtml>). Comments are also available for public inspection and copying in the Commission's Public Reference Room. All comments received will be posted without change; we do not edit personal identifying information from submissions. You should submit only information that you wish to make available publicly.

The Commission, based on the information submitted to it, will issue an order granting the application after the date mentioned above, unless the Commission determines to order a hearing on the matter.

For the Commission, by the Division of Market Regulation, pursuant to delegated authority.⁴

Jonathan G. Katz,

Secretary.

[FR Doc. E5-3185 Filed 6-17-05; 8:45 am]

BILLING CODE 8010-01-P

SECURITIES AND EXCHANGE COMMISSION

[File No. 1-12072]

Issuer Delisting; Notice of Application of Pioneer Railcorp To Withdraw Its Class A Common Stock, \$.001 Par Value, From Listing and Registration on the Chicago Stock Exchange, Inc.

June 13, 2005.

On May 18, 2005, Pioneer Railcorp, an Iowa corporation ("Issuer"), filed an application with the Securities and Exchange Commission ("Commission"), pursuant to Section 12(d) of the Securities Exchange Act of 1934 ("Act")¹ and Rule 12d2-2(d) thereunder,² to withdraw its class A common stock, \$.001 par value ("Security"), from listing and registration on the Chicago Stock Exchange, Inc. ("CHX" or "Exchange").

The Board of Directors ("Board") of the Issuer approved a resolution on September 20, 2004 to withdraw the Security from listing and registration on CHX. The Issuer stated that the reasons for the Board's decision to withdraw the Security from CHX are: (1) The Issuer is in the process of attempting to go private and believes it will be successful in that endeavor; (2) upon completion of the going private transaction, the Issuer will no longer file periodic and other reports under the Act as required by the Exchange; and (3) the Security is currently quoted on the over-the-counter Pink Sheets and the Board believes the Pink Sheets will offer an adequate and efficient market for trading the Security. In addition, as a result of low trading volume, the Issuer no longer has a market maker for its Security on the Exchange and is traded in "Cabinet."

The Issuer stated in its application that it has complied with applicable rules of CHX, by providing CHX with the required documents governing the removal of securities from listing and registration on CHX. The Issuer's application relates solely to the withdrawal of the Security from listing on CHX and from registration under Section 12(b) of the Act,³ and shall not affect its obligation to be registered under Section 12(g) of the Act.⁴

Any interested person may, on or before July 6, 2005, comment on the facts bearing upon whether the application has been made in accordance with the rules of CHX, and what terms, if any, should be imposed

⁵ 17 CFR 200.30-3(a)(1).

¹ 15 U.S.C. 78j(d).

² 17 CFR 240.12d2-2(d).

³ 15 U.S.C. 781(b).

⁴ 17 CFR 200.30-3(a)(1).

¹ 15 U.S.C. 78j(d).

² 17 CFR 240.12d2-2(d).

³ 15 U.S.C. 78j(b).

⁴ 15 U.S.C. 78j(g).

by the Commission for the protection of investors. All comment letters may be submitted by either of the following methods:

Electronic Comments

- Use the Commission's Internet comment form (<http://www.sec.gov/rules/delist.shtml>); or
- Send an e-mail to rule-comments@sec.gov. Please include the File Number 1-12072 or;

Paper Comments

- Send paper comments in triplicate to Jonathan G. Katz, Secretary, Securities and Exchange Commission, Station Place, 100 F Street, NE., Washington, DC 20549-9303.

All submissions should refer to File Number 1-12072. This file number should be included on the subject line if e-mail is used. To help us process and review your comments more efficiently, please use only one method. The Commission will post all comments on the Commission's Internet Web site (<http://www.sec.gov/rules/delist.shtml>). Comments are also available for public inspection and copying in the Commission's Public Reference Room. All comments received will be posted without change; we do not edit personal identifying information from submissions. You should submit only information that you wish to make available publicly.

The Commission, based on the information submitted to it, will issue an order granting the application after the date mentioned above, unless the Commission determines to order a hearing on the matter.

For the Commission, by the Division of Market Regulation, pursuant to delegated authority.⁵

Jonathan G. Katz,
Secretary.

[FR Doc. E5-3153 Filed 6-17-05; 8:45 am]

BILLING CODE 8010-01-P

SECURITIES AND EXCHANGE COMMISSION

File No. 1-13253

Issuer Delisting; Notice of Application of Renasant Corporation To Withdraw its Common Stock, \$5.00 Par Value, From Listing and Registration on the American Stock Exchange LLC

June 13, 2005.

On April 29, 2005, Renasant Corporation, a Mississippi corporation ("Issuer"), filed an application with the Securities and Exchange Commission

("Commission"), pursuant to Section 12(d) of the Securities Exchange Act of 1934 ("Act")¹ and Rule 12d2-2(d) thereunder,² to withdraw its common stock, \$5.00 par value ("Security"), from listing and registration on the American Stock Exchange LLC ("Amex").

On October 19, 2004, the Board of Directors ("Board") of the Issuer approved a resolution to withdraw the Security from listing and registration on Amex and to list the Security on the Nasdaq National Market Systems ("Nasdaq"). The Issuer stated that the Board determined to withdraw the Security from listing on Amex based on the following opinions of the Board: (i) Nasdaq is a more efficient and better structured marketplace that may provide the Issuer with a variety of advantages over Amex, including, but not limited to, (a) a screen-based electronic marketplace with competing market makers, (b) increased liquidity, (c) faster trade execution time, and (d) better execution quality; (ii) the Issuer will have improved visibility to investors by listing on Nasdaq; and (iii) Nasdaq will provide the Issuer with greater exposure to institutional investors. Trading in the Security on Nasdaq commenced on May 2, 2005.

The Issuer stated in its application that it has met the requirements of Amex Rule 18 by complying with all applicable laws in effect in the state of Mississippi, in which it is incorporated, and provided written notice of withdrawal to Amex.

The Issuer's application relates solely to withdrawal of the Security from listing on the Amex and from registration under Section 12(b) of the Act,³ and shall not affect its obligation to be registered under Section 12(g) of the Act.⁴

Any interested person may, on or before July 6, 2005, comment on the facts bearing upon whether the application has been made in accordance with the rules of Amex, and what terms, if any, should be imposed by the Commission for the protection of investors. All comment letters may be submitted by either of the following methods:

Electronic Comments

- Use the Commission's Internet comment form (<http://www.sec.gov/rules/delist.shtml>); or
- Send an e-mail to rule-comments@sec.gov. Please include the File Number 1-13253 or;

¹ 15 U.S.C. 78l(d).

² 17 CFR 240.12d2-2(d).

³ 15 U.S.C. 781(b).

⁴ 15 U.S.C. 781(g).

Paper Comments

- Send paper comments in triplicate to Jonathan G. Katz, Secretary, Securities and Exchange Commission, 100 F Street, NE., Washington, DC 20549-9303.

All submissions should refer to File Number 1-13253. This file number should be included on the subject line if e-mail is used. To help us process and review your comments more efficiently, please use only one method. The Commission will post all comments on the Commission's Internet Web site (<http://www.sec.gov/rules/delist.shtml>). Comments are also available for public inspection and copying in the Commission's Public Reference Room. All comments received will be posted without change; we do not edit personal identifying information from submissions. You should submit only information that you wish to make available publicly.

The Commission, based on the information submitted to it, will issue an order granting the application after the date mentioned above, unless the Commission determines to order a hearing on the matter.

For the Commission, by the Division of Market Regulation, pursuant to delegated authority.⁵

Jonathan G. Katz,
Secretary.

[FR Doc. E5-3154 Filed 6-17-05; 8:45 am]

BILLING CODE 8010-01-P

SECURITIES AND EXCHANGE COMMISSION

[Release No. 34-51834; File No. SR-Amex-2005-026]

Self-Regulatory Organizations; American Stock Exchange LLC; Notice of Filing of Proposed Rule Change and Amendment Nos. 1 and 2 thereto Relating to Quotes in Nasdaq UTP Stocks To Be Disseminated by Amex Specialists Before 9:30 a.m.

June 13, 2005.

Pursuant to Section 19(b)(1) of the Securities Exchange Act of 1934 ("Act"),¹ and Rule 19b-4 thereunder,² notice is hereby given that on February 24, 2005, the American Stock Exchange LLC ("Amex" or "Exchange") filed with the Securities and Exchange Commission ("Commission") the proposed rule change as described in Items I, II and III below, which Items have been prepared by the Amex. On

⁵ 17 CFR 200.30-3(a)(1).

¹ 15 U.S.C. 78s(b)(1).

² 17 CFR 240.19b-4.

⁵ 17 CFR 200.30-3(a)(1).

April 14, 2005, the Amex amended the proposed rule change ("Amendment No. 1"). On May 26, 2005, the Amex amended the proposed rule change ("Amendment No. 2"). The Commission is publishing this notice to solicit comments on the proposed rule change, as amended, from interested persons.

I. Self-Regulatory Organization's Statement of the Terms of Substance of the Proposed Rule Change

The Amex seeks to amend Rule 1, Commentary .05 to allow indicative quotes in Nasdaq stocks traded pursuant to unlisted trading privileges ("UTP") to be disseminated by Amex specialists before 9:30 a.m. The text of the proposed rule change, as amended, is set forth below. Proposed new language is in *italics*.

* * * * *

General Rules

Hours of Business

Rule 1 No change

Commentary

.01-.04 No change.

.05 The hours of business for a security traded on the Exchange pursuant to unlisted trading privileges shall be the same as the hours during which the security is traded in the primary market for such security, *provided, however, that Exchange specialists in Nasdaq securities may send quotations to the SIP between 9:25 and 9:30 a.m., and such quotations shall be for test purposes only.* Notwithstanding the foregoing, in accordance with Rules 1000 and 1000A, Portfolio Depositary Receipts and Index Fund Shares trading on the Exchange pursuant to unlisted trading privileges may trade until 4:00 p.m. or 4:15 p.m. as specified by the Exchange.

* * * * *

II. Self-Regulatory Organization's Statement of the Purpose of, and Statutory Basis for, the Proposed Rule Change

In its filing with the Commission, the Amex included statements concerning the purpose of and basis for the proposed rule change, as amended, and discussed any comments it received on the proposed rule change. The text of these statements may be examined at the places specified in Item IV below. The Amex has prepared summaries, set forth in Sections A, B, and C below, of the most significant aspects of such statements.

A. Self-Regulatory Organization's Statement of the Purpose of, and Statutory Basis for, the Proposed Rule Change

1. Purpose

Amex Rule 1 provides that the Exchange is not open for the transaction of business before 9:30 a.m. except as otherwise determined by the Board of Governors. Exceptions to this general rule include the transmission of required pre-opening notifications to Intermarket Trading System participants and the publication of "indications" of the anticipated opening price range in a given security. The proposed rule change would codify this existing practice of the Exchange.

Quotations by Amex specialists in Nasdaq UTP securities are transmitted to the Nasdaq Securities Information Processor ("SIP") through the UTP Quotation Data Feed ("UQDF"). The SIP will not accept pre-opening indications. It will only accept standard quotations (*i.e.*, a bid and offer composed of both price and size). These quotations are collected, consolidated and disseminated by the SIP to quotation vendors through UQDF. While the hours of operation of the UTP Plan are 8 a.m. to 6:30 p.m., the SIP opens at 7:30 a.m. to handle pre-opening quotes from UTP participants as necessary. Amex believes that its specialists should be able to send Nasdaq UTP quotations to the SIP before 9:30 a.m. in order to ensure that their quotations are being accurately received by SIP and that they are, in turn, receiving quotations from the other market centers.³ Bids and offers in these Amex quotations sent to the SIP before 9:30 a.m. (or, in the case of a delayed opening, when a given Nasdaq security opens on the Amex) are not eligible to be hit or taken, but rather, are for test purposes only. Accordingly, Amex believes that it should amend its rules to codify its existing practice of allowing indicative quotes in Nasdaq UTP stocks to be disseminated by specialists between 9:25 and 9:30 a.m. for testing purposes and that that any such pre-opening quotations should not be available to create a binding contract.

2. Statutory Basis

The Amex believes that the proposed rule change is consistent with Section 6(b) of the Act,⁴ in general, and furthers the objectives of Section 6(b)(5),⁵ in particular in that it is designed to prevent fraudulent and manipulative

³ The proposed amendment to Rule 1, Commentary .05 would codify this current practice of the Exchange.

⁴ 15 U.S.C. 78f(b).

⁵ 15 U.S.C. 78f(b)(5).

acts and practices, to promote just and equitable principles of trade, and, in general, to protect investors and the public interest.

B. Self-Regulatory Organization's Statement on Burden on Competition

The Exchange believes that the proposed rule change, as amended, will impose no burden on competition not necessary or appropriate in furtherance of the purposes of the Act.

C. Self-Regulatory Organization's Statement on Comments on the Proposed Rule Change Received From Members, Participants or Others

No written comments were solicited or received with respect to the proposed rule change, as amended.

III. Date of Effectiveness of the Proposed Rule Change and Timing for Commission Action

Within 35 days of the date of publication of this notice in the **Federal Register** or within such longer period (i) as the Commission may designate up to 90 days of such date if it finds such longer period to be appropriate and publishes its reasons for so finding or (ii) as to which the self-regulatory organization consents, the Commission will:

A. By order approve such proposed rule change, as amended, or

B. Institute proceedings to determine whether the proposed rule change, as amended, should be disapproved.

IV. Solicitation of Comments

Interested persons are invited to submit written data, views, and arguments concerning the foregoing, including whether the proposed rule change, as amended, is consistent with the Act. Comments may be submitted by any of the following methods:

Electronic Comments

- Use the Commission's Internet comment form (<http://www.sec.gov/rules/sro.shtml>); or
- Send an e-mail to rule-comments@sec.gov. Please include File Number SR-Amex-2005-026 on the subject line.

Paper Comments

- Send paper comments in triplicate to Jonathan G. Katz, Secretary, Securities and Exchange Commission, 100 F Street, NE., Washington, DC 20549-9303.

All submissions should refer to File Number SR-Amex-2005-026. This file number should be included on the subject line if e-mail is used. To help the Commission process and review your

comments more efficiently, please use only one method. The Commission will post all comments on the Commission's Internet Web site (<http://www.sec.gov/rules/sro.shtml>). Copies of the submission, all subsequent amendments, all written statements with respect to the proposed rule change that are filed with the Commission, and all written communications relating to the proposed rule change between the Commission and any person, other than those that may be withheld from the public in accordance with the provisions of 5 U.S.C. 552, will be available for inspection and copying in the Commission's Public Reference Room. Copies of such filing also will be available for inspection and copying at the principal office of the Amex. All comments received will be posted without change; the Commission does not edit personal identifying information from submissions. You should submit only information that you wish to make available publicly. All submissions should refer to File Number SR-Amex-2005-026 and should be submitted on or before July 11, 2005.

For the Commission, by the Division of Market Regulation, pursuant to delegated authority.⁶

Margaret H. McFarland,
Deputy Secretary.

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SECURITIES AND EXCHANGE COMMISSION

[Release No. 34-51840; File No. SR-Amex-2005-042]

Self-Regulatory Organizations; American Stock Exchange LLC; Notice of Filing and Order Granting Accelerated Approval of a Proposed Rule Change Relating to the Listing and Trading of Notes Linked to the Performance of the CBOE DJIA BuyWrite Index^(sm)

June 14, 2005.

Pursuant to Section 19(b)(1) of the Securities Exchange Act of 1934 ("Act")¹ and Rule 19b-4 thereunder,² notice is hereby given that on April 20, 2005, the American Stock Exchange LLC ("Amex" or "Exchange") filed with the Securities and Exchange Commission ("Commission") the proposed rule change as described in Items I and II below, which Items have been prepared

by the Exchange. The Commission is publishing this notice to solicit comments on the proposed rule change from interested persons and is approving the proposal on an accelerated basis.

I. Self-Regulatory Organization's Statement of the Terms of Substance of the Proposed Rule Change

The Exchange proposes to list and trade notes, the performance of which is linked to the DJIA BuyWrite Index(sm) (the "BXD Index" or "Index"). The text of the proposed rule change is available on the Amex's Web site (<http://www.amex.com>), at the principal offices of the Amex, and at the Commission's Public Reference Room.

II. Self-Regulatory Organization's Statement of the Purpose of, and Statutory Basis for, the Proposed Rule Change

In its filing with the Commission, the Amex included statements concerning the purpose of, and basis for, the proposed rule change and discussed any comments it received on the proposed rule change. The text of these statements may be examined at the places specified in Item III below. The Amex has prepared summaries, set forth in Sections A, B and C below, of the most significant aspects of such statements.

A. Self-Regulatory Organization's Statement of the Purpose of, and Statutory Basis for, the Proposed Rule Change

1. Purpose

Under Section 107A of the Amex Company Guide ("Company Guide"), the Exchange may approve for listing and trading securities that cannot be readily categorized under the listing criteria for common and preferred stocks, bonds, debentures, or warrants.³ The Amex proposes to list for trading under Section 107A of the Company Guide notes linked to the performance of the BXD Index (the "Notes"). The BXD Index is determined, calculated, and maintained solely by the Chicago Board Options Exchange, Inc.

("CBOE").⁴ JPMorgan Chase & Co. ("JPMorgan") will issue the Notes.⁵

⁴ If the BXD Index is discontinued or suspended, the calculation agent, in its sole discretion, may substitute the BXD Index with an index substantially similar to the discontinued or suspended BXD Index (the "Successor Index"). The Successor Index may be calculated and/or published by the CBOE or any other third party. If the CBOE discontinues publication of the BXD Index prior to, and such discontinuance is continuing on, the Final Valuation Date and the calculation agent determines, in its sole discretion, that no Successor Index is available at such time, then the calculation agent will determine the BXD Index closing level for such date. The BXD Index closing level will be computed by the calculation agent in accordance with the formula for and method of calculating the BXD Index last in effect prior to such discontinuance, using the closing price of the DJIA or the stocks underlying the DJIA at the discretion of the calculation agent (or, if trading in the relevant securities has been materially suspended or materially limited, its good faith estimate of the closing price that would have prevailed but for such suspension or limitation) at the close of the principal trading session on such date for the DJIA or for each security comprising the DJIA, the arithmetic average of the last bid and ask prices (or, if trading in the relevant call option has been materially suspended or materially limited, its good faith estimate of the arithmetic average of the last bid and ask prices that would have prevailed but for such suspension or limitation) of the relevant call option reported before 4:00 p.m. Eastern time and such other inputs as may reasonably be necessary. Notwithstanding these alternative arrangements, discontinuance of the publication of the BXD Index on the relevant exchange may adversely affect the value of the notes. If at any time the method of calculating the BXD Index, the DJIA, or a Successor Index, or the level thereof is changed in a material respect, or if the BXD Index, the DJIA, or a Successor Index is in any other way modified so that the BXD Index or a Successor Index does not, in the opinion of the calculation agent, fairly represent the level of the BXD Index or such Successor Index had such changes or modifications not been made, then, from and after such time, the calculation agent will, at the close of business in New York City on each date on which the BXD Index closing level is to be determined, make such calculations and adjustments as, in the good faith judgment of the calculation agent, may be necessary in order to arrive at a level of an index comparable to the BXD Index or such Successor Index, as the case may be, as if such changes or modifications had not been made, and the calculation agent will calculate the BXD Index closing level with reference to the BXD Index or such Successor Index, as adjusted. Accordingly, if the method of calculating the BXD Index, the DJIA, or a Successor Index is modified so that the level of the BXD Index or a Successor Index is a fraction of what it would have been if there had been no such modification (e.g., due to a split in the index), then the calculation agent will adjust such index in order to arrive at a level of the BXD Index or such Successor Index as if there had been no such modification (e.g., as if such split had not occurred).

J.P. Morgan Securities Inc., an affiliate of JPMorgan, has been appointed to act as the calculation agent. Telephone conversation between Jeffrey P. Burns, Associate General Counsel, Amex and David Liu, Attorney, Division of Market Regulation ("Division"), Commission, on May 26, 2005.

⁵ The Exchange states that JPMorgan and Dow Jones & Co. ("Dow Jones") are negotiating a non-exclusive license agreement, with up to a 165-day exclusivity period, providing for the use of the BXD Index by JPMorgan in connection with certain securities, including the Notes. Dow Jones is not

⁶ 17 CFR 200.30-3(a)(12).

¹ 15 U.S.C. 78s(b)(1).

² 17 CFR 240.19b-4.

³ See Securities Exchange Act Release No. 27753 (Mar. 1, 1990), 55 FR 8626 (Mar. 8, 1990) (File No. SR-Amex-89-29).

The Notes will conform to the initial listing guidelines under Section 107A⁶ and continued listing guidelines under Sections 1001–1003⁷ of the Company Guide. The Notes are a series of medium-term debt securities of JPMorgan that provide for a cash payment at maturity based on the performance of the BXD Index as adjusted by the Adjustment Amount.⁸ The principal amount of each Note is expected to be \$1,000. The Notes will not have a minimum principal amount that will be repaid and, accordingly, payment on the Notes at maturity may be less than the original issue price of the Notes. In fact, the value of the BXD Index must increase for the investor to

receive at least the \$1,000 principal amount per security at maturity. If the value of the BXD Index decreases or does not increase sufficiently, the investor will receive less, and possibly significantly less, than the \$1,000 principal amount per security. In addition, holders of the Notes will not receive any interest payments from the Notes. The Notes will have a term of at least one (1) but no more than ten (10) years.⁹

The cash payment that a holder or investor of a Note will be entitled to receive at maturity (the “Payment Amount”) will depend on the relation of the level of the BXD Index at the close of the market on the Final Valuation

Date¹⁰ (the “Final Index Level”) and the closing value of the Index on the date JPMorgan prices the Notes for initial sale to the public (the “Initial Index Level”) less the Adjustment Amount. If there is a “market disruption event”¹¹ when determining the Final Index Level, the Final Index Level will be determined on the next available trading day during which no “market disruption event” occurs. For purposes of determining the amount payable at maturity of the Notes, the Payment Amount will be determined on the Final Valuation Date.

The Payment Amount per Note will equal:

$$\$1,000 \times \left(1 + \frac{\text{Final Index Level} - \text{Initial Index Level}}{\text{Initial Index Level}} \right) - \left(1.0\% \left(\frac{n}{365} \right) \right), \text{ where } n \text{ is}$$

The Notes are cash-settled in U.S. dollars and do not give the holder any right to receive any of the component securities, dividend payments, or any other ownership right or interest in the securities comprising the BXD Index. The Notes are designed for investors

who want to participate in the exposure to the DJIA that the BXD Index provides while limiting downside risk, and who are willing to forego principal protection and interest payments on the Notes during their term.

The Exchange notes that the Commission has previously approved the listing on the Amex of securities with structures similar to that of the proposed Notes.¹² *Description of the Index.* The BXD Index is a benchmark index designed to measure the

responsible for and will not participate in the issuance and creation of the Notes.

⁶ The initial listing standards for the Notes require: (1) a minimum public distribution of one million units; (2) a minimum of 400 shareholders; (3) a market value of at least \$4 million; and (4) a term of at least one year. Because the Notes will be issued in \$1,000 denominations, the minimum public distribution requirement of one million units and the minimum holder requirement of 400 holders do not apply. In addition, the listing guidelines provide that the issuer has assets in excess of \$100 million, stockholder's equity of at least \$10 million, and pre-tax income of at least \$750,000 in the last fiscal year or in two of the three prior fiscal years. In the case of an issuer which is unable to satisfy the earning criteria stated in Section 101 of the Company Guide, the Exchange will require the issuer to have the following: (1) assets in excess of \$200 million and stockholders' equity of at least \$10 million; or (2) assets in excess of \$100 million and stockholders' equity of at least \$20 million.

⁷ The Exchange's continued listing guidelines are set forth in Sections 1001 through 1003 of Part 10 to the Exchange's Company Guide. Section 1002(b) of the Company Guide states that the Exchange will consider removing from listing any security where, in the opinion of the Exchange, it appears that the extent of public distribution or aggregate market value has become so reduced to make further dealings on the Exchange inadvisable. With respect to continued listing guidelines for distribution of the Notes, the Exchange will rely, in part, on the guidelines for bonds in Section 1003(b)(iv) of the Company Guide. Section 1003(b)(iv)(A) of the Company Guide provides that the Exchange will normally consider suspending dealings in, or removing from the list, a security if the aggregate market value or the principal amount of bonds publicly held is less than \$400,000.

⁸ The Adjustment Amount is an annual fee that accrues daily over the term of the Notes. The Adjustment Amount is equal to 1.0% multiplied by

the number of days since the pricing date of the Notes divided by 365.

⁹ The term of the Notes is expected to be one (1) year and will be disclosed in the pricing supplement.

¹⁰ The Final Valuation Date will be the third scheduled trading day prior to the maturity date.

¹¹ A “market disruption event” means: (i) A suspension, absence, or material limitation of trading of stocks then constituting 20 percent or more of the level of the DJIA (or the relevant successor index) on the relevant exchanges (as defined below) for such securities for more than two hours of trading (or one hour of trading on any day that is a “roll date” for purposes of calculating the BXD Index) during, or during the one hour period preceding the close of, the principal trading session on such relevant exchange; or (ii) a breakdown or failure in the price and trade reporting systems of any relevant exchange as a result of which the reported trading prices for stocks then constituting 20 percent or more of the level of the DJIA (or the relevant successor index) (A) during the one hour preceding the close of the principal trading session on such relevant exchange or (B) during any one hour period of trading on such relevant exchange on any day that is a “roll date” for purposes of calculating the BXD Index; or (iii) a suspension, absence, or material limitation of trading of call options nominally sold in connection with the BXD Index (or the relevant successor index) on the CBOE for more than two hours of trading, or during the one hour period preceding, and including, the scheduled time at which the value of such options is calculated for purposes of calculating the BXD Index; or (iv) a breakdown or failure in the price and trade reporting systems of the CBOE as a result of which the reported trading prices for call options nominally sold in connection with the BXD Index during the one hour period preceding, and including, the scheduled time at which the value of such options is calculated for purposes of the BXD Index are materially inaccurate; or (v) the suspension, absence, or material limitation of trading on any major U.S.

securities market for trading in futures or options contracts related to the DJIA or the BXD Index (or the relevant successor index) for more than two hours of trading during, or during the one hour period preceding the close of, the principal trading session on such market; or a decision to permanently discontinue trading in the relevant futures or options contract, in each case as determined by the calculation agent in its sole discretion; and a determination by the calculation agent in its sole discretion that the event described above materially interfered with its ability or the ability of any of JPMorgan's affiliates to adjust or unwind all or a material portion of any hedge with respect to the notes. “Relevant exchange” means the primary U.S. organized exchange or market of trading for any security (or any combination thereof) then included in the BXD Index or any successor index. Telephone conversation between Jeffrey P. Burns, Associate General Counsel, Amex and David Liu, Attorney, Division, Commission, on May 26, 2005.

¹² See Securities Exchange Act Release Nos. 51634 (Apr. 29, 2005), 70 FR 24138 (May 6, 2005) (approving the listing and trading of notes linked to the BXM Index) (File No. SR-Amex-2005-036); 51426 (Mar. 23, 2005), 70 FR 16315 (Mar. 30, 2005) (approving the listing and trading of notes linked to the BXM Index) (File No. SR-Amex-2005-022); and 50719 (Nov. 22, 2004), 69 FR 69644 (Nov. 30, 2004) (approving the listing and trading of non-principal protected notes linked to the BXM Index) (File No. SR-Amex-2004-55). The BXM index is the CBOE S&P 500 Buy Write IndexSM, while the BXD is a parallel index using the DJIA as the underlying index rather than the S&P 500. In addition, the Exchanges notes that the Commission has previously approved the listing and trading of a packaged buy-write option strategy known as “BOUNDS.” See Securities Exchange Act Release No. 36710 (Jan. 11, 1996), 61 FR 1791 (Jan. 23, 1996) (File Nos. SR-Amex-94-56, SR-CBOE-95-14, and SR-PSE-95-01).

performance of a hypothetical “buy-write”¹³ strategy on the DJIA. Developed by the CBOE in cooperation with Dow Jones, the Index was initially announced in March 2005.¹⁴ The BXD was set to an initial value of 100.00 as of October 16, 1997. The Exchange states that the CBOE developed the BXD Index in response to several factors, including the repeated requests by options portfolio managers that the CBOE provide an objective benchmark for evaluating the performance of buy-write strategies, one of the most popular option trading strategies. Further, the CBOE developed the BXD Index to provide investors with a relatively straightforward indicator of the risk-reducing character of options that otherwise may seem complicated and inordinately risky.

The BXD Index is a passive total return index based on (1) buying a portfolio consisting of the component stocks of the DJIA, and (2) “writing” (or selling) near-term DJIA call options (DJX), generally on the third Friday of each month. This strategy consists of a hypothetical portfolio consisting of a “long” position indexed to the DJIA on which are deemed sold a succession of one-month, at-the-money call options on the DJIA (DJX) listed on the CBOE. Dividends paid on the component stocks underlying the DJIA and the dollar value of option premium deemed received from the sold call options are functionally “re-invested” in the covered DJIA portfolio.

The value of the BXD Index on any given date will equal (1) the value of the

BXD Index on the previous day multiplied by (2) the daily rate of return¹⁵ on the covered DJIA portfolio on that date. Thus, the daily change in the BXD Index reflects the daily changes in value of the covered DJIA portfolio, which consists of the DJIA (including dividends) and the component DJIA call option (DJX). The daily closing price of the BXD Index is calculated and disseminated by the CBOE on its Web site at www.cboe.com and via the Options Pricing and Reporting Authority (“OPRA”) at the end of each trading day.¹⁶ The value of the DJIA is widely disseminated at least once every fifteen (15) seconds throughout the scheduled trading day. The Exchange believes that the intraday dissemination of the DJIA, along with the ability of investors to obtain real-time, intraday DJIA call option (DJX) pricing, provides sufficient transparency regarding the BXD Index.¹⁷ In addition, as indicated above, the value of the BXD Index is calculated once every scheduled trading

day, thereby providing investors with a daily value of such “hypothetical” buy-write options strategy on the DJIA.

The Exchange states that the CBOE has represented that the BXD Index value will be calculated and disseminated by the CBOE once every scheduled trading day after the close. The daily change in the BXD Index reflects the daily changes in the DJIA and related options positions. The Exchange states that JPMorgan has represented that it will seek to arrange to have the BXD Index calculated and disseminated on a daily basis through a third party if the CBOE ceases to calculate and disseminate the Index.¹⁸ If, however, JPMorgan is unable to arrange the calculation and dissemination of the BXD Index (or a Successor Index) as indicated above, the Exchange will undertake to delist the Notes.¹⁹

In order to provide an updated value of the Payment Amount for use by investors, the Exchange will disseminate over the Consolidated Tape Association’s Network B, a daily indicative value (the “Indicative Value”) of the Notes. The Indicative Value will equal the performance of the BXD less the Adjustment Amount. The Indicative Value will be calculated by the Amex after the close of trading and after the CBOE calculates the BXD Index for use by investors the next scheduled trading day. It is designed to provide investors with a daily reference value of the adjusted BXD Index. The Indicative Value may not reflect the precise value of the Notes or Payment Amount. Therefore, the Indicative Value disseminated by the Amex during trading hours should not be viewed as a real time update of the BXD Index, which is calculated only once a day. While the Indicative Value that will be disseminated by the Amex is expected to be close to the current BXD Index value, the values of the Indicative Value and the BXD Index will diverge due to the application of the Adjustment Amount.

From October 31, 1997 through March 31, 2005, the annualized returns for the BXD Index and the DJIA were 7.15% and 6.76%, respectively, with a total deviation of the returns during the same time period of 4.43%. As the chart

¹³ A “buy-write” is a conservative options strategy in which an investor buys a stock or portfolio and writes call options on the stock or portfolio. This strategy is also known as a “covered call” strategy. A buy-write strategy provides option premium income to cushion decreases in the value of an equity portfolio, but will underperform stocks in a rising market. A buy-write strategy tends to lessen overall volatility in a portfolio.

¹⁴ The BXD Index consists of a long position in the component securities of the DJIA and options on the DJIA (DJX). See www.cboe.com/bxd. The Exchange notes that the Commission has approved the listing of numerous securities linked to the performance of the DJIA as well as options on the DJIA. See, e.g., Securities Exchange Act Release Nos. 39011 (Sep. 3, 1997), 62 FR 47840 (Sep. 11, 1997) (approving the listing and trading of options on the DJIA) (File No. SR-CBOE-97-26); 39525 (Jan. 8, 1998), 63 FR 2438 (Jan. 15, 1998) (approving the listing and trading of DIAMONDSSM Trust Units, portfolio depositary receipts based on the DJIA) (File No. SR-Amex-97-29); 46883 (Nov. 21, 2002), 67 FR 71216 (Nov. 29, 2002) (approving the listing and trading of Market Recovery Notes on the DJIA) (File No. SR-Amex-2002-88); 49453 (Mar. 19, 2004), 69 FR 15913 (Mar. 26, 2004) (approving the listing and trading of Contingent Principal Protected Notes linked to the DJIA) (File No. SR-Amex-2004-13); and 51133 (Feb. 3, 2005), 70 FR 7129 (Feb. 10, 2005) (approving the listing and trading of Notes linked to the DJIA) (File No. SR-Amex-2004-101).

¹⁵ The daily rate of return on the covered DJIA portfolio is based on (a) the change in the closing value of the stocks in the DJIA portfolio, (b) the value of ordinary cash dividends on the stocks underlying the DJIA, and (c) the change in the market price of the call option. The daily rate of return will also include the value of ordinary cash dividends distributed on the stocks underlying the DJIA that are trading “ex-dividend” on that date (that is, when transactions in the stock on an organized securities exchange or trading system no longer carry the right to receive that dividend or distribution) as measured from the close in trading on the previous day.

¹⁶ The Exchange notes that the Commission, in connection with Bond Index Term Notes and the Merrill Lynch EuroFund Market Index Target Term Securities, has previously approved the listing and trading of these products where the dissemination of the value of the underlying index occurred once per trading day. See Securities Exchange Act Release Nos. 41334 (Apr. 27, 1999), 64 FR 23883 (May 4, 1999) (approving the listing and trading of Bond Indexed Term Notes) (File No. SR-Amex-99-03); and 40367 (Aug. 26, 1998), 63 FR 47052 (Sep. 3, 1998) (approving the listing and trading of Merrill Lynch EuroFund Market Index Target Term Securities) (File No. SR-Amex-98-24). See also *supra* note 12.

¹⁷ Call options on the DJIA (DJX) are traded on the CBOE, and both last sale and quotation information for the call options are disseminated in real-time through OPRA. The Exchange states that the value of the BXD can be readily approximated as a function of observable market prices throughout the trading day. In particular, such a calculation would require information on the current price of the DJIA index and specific nearest-to-expiration call and put options on that index. These components trade in highly liquid markets, and real-time prices are available continuously throughout the trading day from a number of sources, including Bloomberg and CBOE. The Exchange notes that the “Indicative Value” (as discussed below) may be a more accurate indicator of the valuation of the Notes because it reflects the fees associated with the Notes (e.g., on the initial principal amount and the Adjustment Amount); however, the “Indicative Value” is not adjusted intraday. Telephone conversation between Jeffrey P. Burns, Associate General Counsel, Amex and David Liu, Attorney, Division, Commission, on May 26, 2005.

¹⁸ Prior to such change in the manner in which the BXD Index is calculated, or in the event of any Index substitution, the Exchange will file a proposed rule change pursuant to Rule 19b-4, which must be approved by the Commission prior to continued listing and trading in the Notes.

Telephone conversation between Jeffrey P. Burns, Associate General Counsel, Amex and David Liu, Attorney, Division, Commission, on May 26, 2005.

¹⁹ See *supra* note 4 (regarding discontinuation of the calculation and dissemination of the Notes).

attached as Exhibit 3 to the Exchange's Form 19b-4 indicates, the BXD Index will closely track the DJIA except in those cases where the market is significantly rising or decreasing.²⁰ In the case of a fast rising market, the BXD Index will trail the DJIA due to the limited upside potential of the Index because of the "buy-write" strategy. Due to the cushioning effect of the "buy-write" strategy, the BXD Index has in the past exhibited negative returns that are less than the DJIA during a down market. The Exchange expects the BXD Index to continue to display these characteristics.

The call options (DJX) included in the value of the BXD Index have successive terms of approximately one month. Each day that an option expires, which day is referred to as a "roll" date, that option's value at expiration is taken into account in the value of the BXD Index. At expiration, the call option (DJX) is settled against the "Special Opening Quotation" of the DJX used as the final settlement price of the DJX call options. The Special Opening Quotation is a special calculation of the DJIA that is compiled from the opening price of component stocks underlying the DJIA. The final settlement price of the call option at expiration is equal to the difference between the Special Opening Quotation and the strike price of the expired call option, or zero, whichever is greater, and is removed from the value of the BXD Index. Subsequent to the settlement of the expired call option, a new, "short" or sold at-the-money call option is included in the value of the BXD Index.²¹ The initial value of the new call option is calculated by the CBOE and is based on the volume-weighted average of all the transaction prices of the new call option during a designated time period on the day the strike price is determined.²²

The market capitalization of the DJIA is approximately \$3.6 trillion. The Exchange states that, as of April 18, 2005, the market capitalization of the securities included in the DJIA ranged from a high of \$381.59 billion to a low of \$14.8 billion. The average daily

trading volume for these same securities for the last six (6) months ranged from a high of 292 million shares to a low of 368,900 shares.

The Exchange represents that it prohibits the initial and/or continued listing of any security that is not in compliance with Rule 10A-3 under the Act.²³

The Exchange states that, because the Notes are issued in \$1,000 denominations, the Amex's existing debt floor trading rules will apply to the trading of the Notes. First, pursuant to Amex Rule 411, the Exchange will impose a duty of due diligence on its members and member firms to learn the essential facts relating to every customer prior to trading the Notes.²⁴ Second, even though the Exchange's debt trading rules apply, the Notes will be subject to the equity margin rules of the Exchange.²⁵ Third, the Exchange will, prior to trading the Notes, distribute a circular to the membership providing guidance with regard to member firm compliance responsibilities (including suitability recommendations) when handling transactions in the Notes and highlighting the special risks and characteristics of the Notes. With respect to suitability recommendations and risks, the Exchange will require members, member organizations, and employees thereof recommending a transaction in the Notes (1) to determine that such transaction is suitable for the customer²⁶ and (2) to have a reasonable basis for believing that the customer can evaluate the special characteristics of, and is able to bear the financial risks of, such transaction. In addition, JPMorgan will deliver a prospectus in connection with its sales of the Notes.

The Exchange represents that its surveillance procedures are adequate to properly monitor the trading of the Notes. Specifically, the Amex will rely on its existing surveillance procedures governing equities and options that include additional monitoring on key pricing dates,²⁷ which the Exchange states have been deemed adequate under the Act. In addition, the Exchange also has a general policy which prohibits the distribution of material,

non-public information by its employees.

2. Statutory Basis

The Exchange believes that the proposed rule change is consistent with Section 6(b) of the Act²⁸ in general, and furthers the objectives of Section 6(b)(5) of the Act²⁹ in particular, in that it is designed to prevent fraudulent and manipulative acts and practices, to promote just and equitable principles of trade, to foster cooperation and coordination with persons engaged in facilitating transactions in securities, and to remove impediments to and perfect the mechanism of a free and open market and a national market system.

B. Self-Regulatory Organization's Statement on Burden on Competition

The Exchange does not believe that the proposed rule change will impose any burden on competition that is not necessary or appropriate in furtherance of the purposes of the Act.

C. Self-Regulatory Organization's Statement on Comments on the Proposed Rule Change Received From Members, Participants or Others

The Exchange states that no written comments were solicited or received with respect to the proposed rule change.

III. Solicitation of Comments

Interested persons are invited to submit written data, views, and arguments concerning the foregoing, including whether the proposed rule change is consistent with the Act. Comments may be submitted by any of the following methods:

Electronic Comments

- Use the Commission's Internet comment form (<http://www.sec.gov/rules/sro.shtml>); or
- Send an e-mail to rule-comments@sec.gov. Please include File Number SR-Amex-2005-042 on the subject line.

Paper Comments

- Send paper comments in triplicate to Jonathan G. Katz, Secretary, Securities and Exchange Commission, 450 Fifth Street, NW., Washington, DC 20549-0609.

All submissions should refer to File No. SR-Amex-2005-042. This file number should be included on the subject line if e-mail is used. To help the Commission process and review your

²⁰ The Exchange states that buy-write strategies, such as the BXD Index, generally outperformed stocks in 2000-2002 when the DJIA achieved negative returns, but tended to underperform stocks in the late 1990s when the DJIA rose by more than 15% per year.

²¹ Like the expired call option, the new call option will expire approximately one month after the date of sale.

²² For this purpose, the CBOE excludes from the calculation those call options identified as having been executed as part of a spread (*i.e.*, a position taken in two or more options in order to profit through changes in the relative prices of those options).

²³ See 17 CFR 240.10A-3.

²⁴ Amex Rule 411 requires, among other things, that every member or member organization use due diligence to learn the essential facts, relative to every customer and to every order or account accepted.

²⁵ See Amex Rule 462 and Section 107B of the Company Guide.

²⁶ See Amex Rule 411.

²⁷ Telephone conversation between Jeffrey P. Burns, Associate General Counsel, Amex and David Liu, Attorney, Division, Commission, on May 26, 2005.

²⁸ 15 U.S.C. 78f(b).

²⁹ 15 U.S.C. 78f(b)(5).

comments more efficiently, please use only one method. The Commission will post all comments on the Commission's Internet Web site (<http://www.sec.gov/rules/sro.shtml>). Copies of the submission, all subsequent amendments, all written statements with respect to the proposed rule change that are filed with the Commission, and all written communications relating to the proposed rule change between the Commission and any person, other than those that may be withheld from the public in accordance with the provisions of 5 U.S.C. 552, will be available for inspection and copying in the Commission's Public Reference Room. Copies of the filing also will be available for inspection and copying at the principal office of the Exchange. All comments received will be posted without change; the Commission does not edit personal identifying information from submissions. You should submit only information that you wish to make available publicly. All submissions should refer to File No. SR-Amex-2005-042 and should be submitted on or before July 11, 2005.

IV. Commission's Findings and Order Granting Accelerated Approval of the Proposed Rule Change

The Amex has asked the Commission to approve the proposal on an accelerated basis to accommodate the timetable for listing the Notes. After careful consideration, the Commission finds that the proposed rule change is consistent with the requirements of the Act and the rules and regulations thereunder applicable to a national securities exchange, and, in particular, with the requirements of Section 6(b)(5) of the Act.³⁰ The Commission finds that this proposal is similar to several approved instruments currently listed and traded on the Amex.³¹ Accordingly, the Commission finds that the listing and trading of the Notes based on the BXD Index is consistent with the Act and will promote just and equitable principles of trade, and foster cooperation and coordination with persons engaged in regulating, clearing,

settling, and processing information with respect to and facilitating transactions in securities consistent with Section 6(b)(5) of the Act.³²

The requirements of Section 107A of the Company Guide were designed to address the concerns attendant to the trading of hybrid securities, like the Notes. For example, Section 107A of the Company Guide provides that only issuers satisfying substantial asset and equity requirements may issue securities such as the Notes. In addition, the Exchange's "Other Securities" listing standards further require that the Notes have a market value of at least \$4 million.³³ In any event, financial information regarding JPMorgan, in addition to the information on the component stocks, which are reporting companies under the Act, and the Notes, which will be registered under Section 12 of the Act, will be available.

In approving the product, the Commission recognizes that the Index is a passive total return index based on (1) buying a portfolio consisting of the component stocks of the DJIA and (2) "writing" (or selling) near-term DJIA call options (DJX), generally on the third Friday of each month. Given the large trading volume and capitalization of the compositions of the stocks underlying the DJIA, the Commission believes that the listing and trading of the Notes that are linked to the BXD Index should not unduly impact the market for the underlying securities compromising the DJIA or raise manipulative concerns.³⁴ Moreover, the issuers of the underlying securities comprising the DJIA are subject to reporting requirements under the Act, and all of the component stocks are either listed or traded on, or traded through the facilities of, U.S. securities markets.

The Commission also believes that any concerns that a broker-dealer, such as JPMorgan, or a subsidiary providing a hedge for the issuer, will incur undue position exposure are minimized by the size of the Notes issuance in relation to the net worth of JPMorgan.³⁵

Finally, the Commission notes that the value of the Index will be calculated and disseminated by the CBOE once every trading day after the close of trading. However, the Commission notes that the value of the DJIA will be widely disseminated at least once every fifteen seconds throughout the trading day and that investors are able to obtain real-time call option pricing on the DJIA during the trading day. Further, the Indicative Value, which will be calculated by the Amex after the close of trading and after the CBOE calculates the BXD Index for use by investors the next trading day, is designed to provide investors with a daily reference value of the adjusted Index. The Commission notes that JPMorgan has agreed to arrange to have the BXD Index calculated and disseminated on a daily basis through a third party in the event that the CBOE discontinues calculating and disseminating the Index. In such event, the Exchange agrees to obtain Commission approval, pursuant to filing the appropriate Form 19b-4, prior to the substitution of the CBOE BXD Index. Further, the Commission notes that the Exchange has agreed to undertake to delist the Notes in the event that the CBOE ceases to calculate and disseminate the Index, and JPMorgan is unable to arrange to have the BXD Index calculated and widely disseminated through a third party.

The Commission finds good cause for approving the proposed rule change prior to the 30th day after the date of publication of the notice of filing thereof in the **Federal Register**. The Exchange has requested accelerated approval because this product is similar to several other instruments currently listed and traded on the Amex.³⁶ The Commission believes that the Notes will provide investors with an additional investment choice and that accelerated approval of the proposal will allow investors to begin trading the Notes promptly. Additionally, the Notes will be listed pursuant to Amex's existing hybrid security listing standards as

(order approving the listing and trading of notes whose return is based on the performance of the Nasdaq-100 Index) (File No. SR-NASD-2001-73); 44483 (June 27, 2001), 66 FR 35677 (July 6, 2001) (order approving the listing and trading of notes whose return is based on a portfolio of 20 securities selected from the Amex Institutional Index) (File No. SR-Amex-2001-40); and 37744 (Sept. 27, 1996), 61 FR 52480 (Oct. 7, 1996) (order approving the listing and trading of notes whose return is based on a weighted portfolio of healthcare/biotechnology industry securities) (File No. SR-Amex-96-27).

³⁶ See *supra* notes 12 (citing previous approvals of securities with structures similar to that of the proposed Notes); and 14 (citing previous approvals of securities linked to the performance of the DJIA as well as options on the DJIA).

³⁰ 30 15 U.S.C. 78f(b)(5).

³¹ See, e.g., Securities Exchange Act Release Nos. 51634 (Apr. 29, 2005), 70 FR 24138 (May 6, 2005) (approving the listing and trading of notes linked to the performance of the CBOE S&P 500 BuyWrite Index(sm)) (File No. SR-Amex-2005-036); 51426 (Mar. 23, 2005), 70 FR 16315 (Mar. 30, 2005) (approving the listing and trading of notes linked to the performance of the CBOE S&P 500 BuyWrite Index(sm)) (File No. SR-Amex-2005-022); 50719 (Nov. 22, 2004), 69 FR 69644 (Nov. 30, 2004) (approving the listing and trading of notes linked to the performance of the CBOE S&P 500 BuyWrite Index(sm)) (File No. SR-Amex-2004-55).

³² 15 U.S.C. 78f(b)(5). In approving the proposed rule, the Commission has considered the proposed rule's impact on efficiency, competition, and capital formation. See 15 U.S.C. 78c(f).

³³ See Section 107A(c) of the Company Guide.

³⁴ The issuer, JPMorgan, disclosed in the prospectus and prospectus supplement that the hedging activities of it and its affiliates, including taking positions in the stocks underlying the Index and selling call options on the Index, which could adversely affect the market value of the Notes from time to time and the redemption amount holders of the Notes would receive on the Notes. Such hedging activity must, of course, be conducted in accordance with applicable regulatory requirements.

³⁵ See Securities Exchange Act Release Nos. 44913 (Oct. 9, 2001), 66 FR 52469 (Oct. 15, 2001)

described above. Therefore, the Commission finds good cause, consistent with Section 19(b)(2) of the Act,³⁷ to approve the proposal on an accelerated basis.

V. Conclusion

It is therefore ordered, pursuant to Section 19(b)(2) of the Act,³⁸ that the proposed rule change (File No. SR-Amex-2005-042) is hereby approved on an accelerated basis.

For the Commission, by the Division of Market Regulation, pursuant to delegated authority.³⁹

Margaret H. McFarland,

Deputy Secretary.

[FR Doc. E5-3184 Filed 6-17-05; 8:45 am]

BILLING CODE 8010-01-P

SECURITIES AND EXCHANGE COMMISSION

[Release No. 34-51830; File No. SR-CBOE-2005-26]

Self-Regulatory Organizations; Chicago Board Options Exchange, Incorporated; Notice of Filing and Order Granting Accelerated Approval of a Proposed Rule Change and Amendment No. 1 Thereto Relating to the Terms of Index Option Contracts Listed on the Exchange

June 13, 2005.

Pursuant to Section 19(b)(1) of the Securities Exchange Act of 1934 ("Act")¹ and Rule 19b-4 thereunder,² notice is hereby given that on March 16, 2005, the Chicago Board Options Exchange, Incorporated ("CBOE" or "Exchange") filed with the Securities and Exchange Commission ("Commission") the proposed rule change as described in Items I and II below, which Items have been prepared by the Exchange. On June 9, 2005, CBOE submitted Amendment No. 1 to the proposed rule change.³ The Commission is publishing this notice to solicit comments on the proposed rule change, as amended, from interested persons and to grant accelerated approval to the proposed rule change, as amended.

³⁷ 37 15 U.S.C. 78s(b)(2).

³⁸ 38 15 U.S.C. 78s(b)(2).

³⁹ 17 CFR 200.30-3(a)(12).

¹ 15 U.S.C. 78s(b)(1).

² 17 CFR 240.19b-4.

³ See Form 19b-4, dated June 9, 2005 ("Amendment No. 1). Amendment No. 1 replaced the original rule filing in its entirety. In Amendment No. 1, CBOE made certain clarifications to the proposed rule text by referencing Interpretation and Policy .12 to Rule 24.9 (determination of pricing sources used in the calculation of an index) and further clarified the rationale for pursuing this rule change.

I. Self-Regulatory Organization's Statement of the Terms of Substance of the Proposed Rule Change

The Exchange proposes to amend its rules relating to the terms of index option contracts listed on the Exchange. The text of the proposed rule change is below. Proposed new language is in italics; deletions are in brackets.

* * * * *

CHAPTER XXIV

Index Options

Rule 24.1—Rule 24.8 No Change

* * * * *

Rule 24.9—Terms of Index Option Contracts

Rule 24.9. (a) General.

(1)–(3) No Change.

(4) A.M.-Settled Index Options. The last day of trading for A.M.-settled index options shall be the business day preceding the last day of trading in the underlying securities prior to expiration. The current index value at the expiration of an A.M.-settled index option shall be determined, for all purposes under these rules and the rules of the Clearing Corporation, on the last day of trading in the underlying securities prior to expiration, by reference to the reported level of such index as derived from [first reported sale] *the opening [(opening)] prices of the underlying securities on such day, as determined by the market for such security selected by the Reporting Authority pursuant to Interpretation and Policy .12 to Rule 24.9*, except that in the event that the primary market for an underlying security does not open for trading, halts trading prematurely, or otherwise experiences a disruption of normal trading on that day, or in the event that the primary market for an underlying security is open for trading on that day, but that particular security does not open for trading, halts trading prematurely, or otherwise experiences a disruption of normal trading on that day, the price of that security shall be determined, for the purposes of calculating the current index value at expiration, as set forth in Rule 24.7(e).

The following A.M.-settled index options are approved for trading on the Exchange:

(i)–(lxxiv) No Change.

* * * * *

(5) Other Methods of Determining Exercise Settlement Value. Exercise settlement values for the following index options are determined as specified in this paragraph:

(i) No Change.

(ii) [Nasdaq 100 Stock Index. The current index value at expiration shall

be determined, for all purposes under these Rules and the Rules of the Clearing Corporation, on the last day of trading in the underlying securities prior to expiration. The current index value for such purposes shall be calculated by the Nasdaq Stock Market, Inc. ("Nasdaq") and reported to the CBOE using the volume weighted prices ("VWPs") of the securities underlying the Nasdaq-100 Index, which VWPs shall be calculated according to the then current volume-weighted averaging methodology developed by Nasdaq.

(iii) [CBOE Volatility Indexes and CBOE Increased-Value Volatility Indexes. The current index value at expiration shall be determined, for all purposes under these Rules and the Rules of the Clearing Corporation, on the last day of trading in the underlying securities prior to expiration. The current index value for such purposes shall be calculated by the Chicago Board Options Exchange as a Special Opening Quotation (SOQ) of each respective Volatility or Increased-Value Volatility Index using the sequence of opening prices of the options that comprise each Index. The opening price for any series in which there is no trade shall be the average of that option's bid price and ask price as determined at the opening of trading.

(b)–(c) No Change.

* * * *Interpretations and Policies:*

.01–.12 No Change.

* * * * *

II. Self-Regulatory Organization's Statement of the Purpose of, and Statutory Basis for, the Proposed Rule Change

In its filing with the Commission, CBOE included statements concerning the purpose of and basis for the proposed rule change and discussed any comments it received on the proposed rule change. The text of these statements may be examined at the places specified in Item III below. The CBOE has prepared summaries, set forth in Sections A, B, and C below, of the most significant aspects of such statements.

A. Self-Regulatory Organization's Statement of the Purpose of, and Statutory Basis for, the Proposed Rule Change

1. Purpose

The purpose of the proposed rule change is to clarify CBOE rules relating to the determination of opening prices for securities that underlie certain A.M.-settled index options traded on the Exchange and to clarify CBOE rules relating to the determination of the exercise settlement value for certain

option contracts that are based on the Nasdaq 100 Index.

Currently, CBOE Rule 24.9(a)(4) provides that the current index value at expiration of an A.M.-settled index option is determined on the last day of trading in the underlying securities prior to expiration, by reference to the reported level of such index as derived "from first reported sale (opening) prices of the underlying securities on such day." The Exchange believes it important to clarify in CBOE Rules that, although the settlement values of an A.M.-settled index are generally determined from the first reported sale of the securities that underlie the index, the specific methodology for ascertaining the opening prices is largely determined by factors outside of the CBOE's control. Specifically, these factors include the fact that (1) the Reporting Authority⁴ for a particular index may not always be using the primary market for a particular index component security⁵ and/or (2) the opening price for any particular component security used to calculate the index may not always be the first reported sale of that security, regardless of whether the Reporting Authority is using the underlying security's primary market as the pricing source.⁶

To emphasize factor (1) above, the Exchange proposes to reference existing Interpretation and Policy .12 to Rule 24.9⁷ in paragraph (4) to CBOE Rule 24.9(a). Regarding factor (2) above, there

may be circumstances in which the opening price for a particular component(s) underlying an index may not be the first reported sale for that component. To illustrate, Nasdaq has recently received approval to utilize a single opening pricing methodology ("Nasdaq Official Opening Price") for securities traded through Nasdaq.⁸ Through this new methodology, the Nasdaq Official Opening Price reported by Nasdaq for a security may not always be the first reported sale. As such, referring to opening prices as the "first reported sale," as is currently described in CBOE Rule 24.9(a)(4), is simply not accurate.

Therefore, the Exchange proposes to amend CBOE Rule 24.9(a)(4), in part, (1) to eliminate reference to the term "first reported sale" and (2) to reflect that the opening prices of the underlying securities at expiration of an A.M.-settled index option will be determined by the market (securities exchange or Nasdaq) for such security selected by the Reporting Authority, as consistent with Interpretation and Policy .12 to Rule 24.9.

Additionally, this rule filing proposes to revise Rule 24.9(a)(5)(ii), which describes the manner in which Nasdaq determines the exercise settlement value for the Nasdaq 100 Index. Until recently, as described in Rule 24.9(a)(5)(ii), Nasdaq calculated the exercise settlement value for the Nasdaq 100 Index using the volume weighted prices ("VWP") of the securities underlying the Nasdaq 100 Index. Nasdaq now uses a new methodology that, essentially, relies on a single price of each security that underlies the Nasdaq 100 Index.⁹ As Nasdaq will no longer be using a special VWP methodology for calculating the exercise settlement value for the Nasdaq 100 Index and, relying instead on the general provision in CBOE Rule 24.9(a)(4),¹⁰ CBOE proposes to merely eliminate the VWP description entirely from CBOE Rule 24.9(a)(5).

2. Statutory Basis

Because these proposed amendments serve to clarify existing rules relating to the determination of the opening prices for the securities that underlie indexes on which the Exchange lists options and also clarifies the method for

determining the exercise settlement value for certain option contracts that are based on the Nasdaq 100 Index, the Exchange believes that the proposed rule change is consistent with and furthers the objectives of Section 6(b)(5) of the Act,¹¹ in that it is designed to remove impediments to and perfect the mechanism of a free and open market and a national market system, and in general, to protect investors and the public interest.

B. Self-Regulatory Organization's Statement on Burden on Competition

This proposed rule change does not impose any burden on competition that is not necessary or appropriate in furtherance of the purposes of the Act.

C. Self-Regulatory Organization's Statement on Comments on the Proposed Rule Change Received From Members, Participants or Others

The CBOE neither solicited nor received comments with respect to the proposed rule change.

III. Solicitation of Comments

Interested persons are invited to submit written data, views, and arguments concerning the foregoing, including whether the proposed rule change, as amended, is consistent with the Act. Comments may be submitted by any of the following methods:

Electronic Comments

- Use the Commission's Internet comment form (<http://www.sec.gov/rules/sro.shtml>); or
- Send an e-mail to rule-comments@sec.gov. Please include File Number SR-CBOE-2005-26 on the subject line.

Paper Comments

- Send paper comments in triplicate to Jonathan G. Katz, Secretary, Securities and Exchange Commission, Station Place, 100 F Street, NE., Washington, DC 20549-9303.

All submissions should refer to File Number SR-CBOE-2005-26. This file number should be included on the subject line if e-mail is used. To help the Commission process and review your comments more efficiently, please use only one method. The Commission will post all comments on the Commission's Internet Web site (<http://www.sec.gov/rules/sro.shtml>). Copies of the submission, all subsequent amendments, all written statements with respect to the proposed rule change that are filed with the Commission, and all written

⁴ CBOE Rule 24.1(h) defines a Reporting Authority as " * * in respect of a particular index means the institution or reporting service designated by the Exchange as the official source for calculating the level of the index from the reported prices of the underlying securities that are the bases of the index and reporting such level."

⁵ Interpretation and Policy .12 to CBOE Rule 24.9 provides that, "[w]ith respect to any securities index on which options are traded on the Exchange, the source of the prices of component securities used to calculate the current index level at expiration is determined by the Reporting Authority for that index."

⁶ Although the Reporting Authority has discretion in selecting the source (i.e., primary market or other securities exchange) of pricing for securities that underlie the index, the opening price must be determined in accordance with the rules of the securities exchange (or Nasdaq) that the Reporting Authority selects as the source of pricing to be used in the calculation of the index.

Additionally, and as is consistent with CBOE Rule 24.9(a)(4), the Reporting Authority will be required to use the opening price in the calculation of the index value, not the closing price from the previous trading day.

⁷ See *supra* at Note 4 and see also Securities Exchange Act Release No. 50269 (August 26, 2004); 69 FR 53755 (September 2, 2004) (Notice of Filing and Immediate Effectiveness of proposed rule change adding Interpretation and Policy .12 to Rule 24.9). Telephone conversation between Terri Evans, Special Counsel, Division of Market Regulation, Commission, and James Flynn, Attorney, CBOE, on June 10, 2005.

⁸ See Securities Exchange Act Release No. 50405 (September 16, 2004); 69 FR 57118 (September 23, 2004).

⁹ *Id.*

¹⁰ Telephone conversation between Terri Evans, Special Counsel, Division of Market Regulation, Commission, and James Flynn, Attorney, CBOE, on June 10, 2005 (changing reference from Interpretation and Policy .12 to Rule 24.9(a)(4)).

¹¹ 15 U.S.C. 78f(b)(5).

communications relating to the proposed rule change between the Commission and any person, other than those that may be withheld from the public in accordance with the provisions of 5 U.S.C. 552, will be available for inspection and copying in the Commission's Public Reference Section. Copies of such filing also will be available for inspection and copying at the principal office of the CBOE. All comments received will be posted without change; the Commission does not edit personal identifying information from submissions. You should submit only information that you wish to make available publicly. All submissions should refer to File Number SR-CBOE-2005-26 and should be submitted on or before July 11, 2005.

IV. Commission Findings and Order Granting Accelerated Approval of Proposed Rule Change

The Commission finds that the proposed rule change, as amended, is consistent with the requirements of the Act and the rules and regulations thereunder applicable to a national securities exchange.¹² In particular, the Commission finds that the proposed rule change, as amended, is consistent with Section 6(b)(5) of the Act,¹³ which requires, in part, that the rules of an exchange be designed to remove impediments to and perfect the mechanism of a free and open market and a national market system, and in general, to protect investors and the public interest. The Commission believes that the proposed rule change reflects the change in methodology for calculating the index settlement value of the Nasdaq 100 Index and clarifies that the settlement values of A.M. settled index options may be determined using an opening price other than the first reported sale.

The Commission finds good cause for accelerating approval of the proposed rule change, as amended, prior to the thirtieth day after publication in the **Federal Register**. The Commission notes that accelerating approval of the proposed rule change will allow the Exchange to timely reflect in its rules the manner in which Nasdaq proposes to calculate the current index value at expiration for the Nasdaq 100 Index starting with the June 2005 expiration. Accordingly, the Commission finds good cause, consistent with Section 19(b)(2) of the Act,¹⁴ to approve the

proposed rule change, as amended, on an accelerated basis.

V. Conclusion

It is therefore ordered, pursuant to Section 19(b)(2) of the Act,¹⁵ that the proposed rule change, as amended (File No. SR-CBOE-2005-26), be approved on an accelerated basis.

For the Commission, by the Division of Market Regulation, pursuant to delegated authority.¹⁶

Margaret H. McFarland,

Deputy Secretary.

[FR Doc. E5-3150 Filed 6-17-05; 8:45 am]

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SECURITIES AND EXCHANGE COMMISSION

[Release No. 34-51828; File No. SR-CBOE-2005-42]

Self-Regulatory Organizations; Chicago Board Options Exchange, Incorporated; Notice of Filing and Immediate Effectiveness of Proposed Rule Change and Amendment No. 1 Thereto Relating to a Fee Cap for Options Merger Spread Transactions

June 13, 2005.

Pursuant to Section 19(b)(1) of the Securities Exchange Act of 1934 ("Act")¹ and Rule 19b-4 thereunder,² notice is hereby given that on May 23, 2005, the Chicago Board Options Exchange, Incorporated ("CBOE" or "Exchange") filed with the Securities and Exchange Commission ("Commission") the proposed rule change as described in Items I, II, and III below, which Items have been prepared by CBOE. On May 31, 2005, the Exchange filed Amendment No. 1 to the proposed rule change.³ The Exchange designated the proposed rule change, as amended, as establishing or changing a due, fee, or other charge imposed by the Exchange under Section 19(b)(3)(A)(ii) of the Act,⁴ and Rule 19b-4(f)(2) thereunder,⁵ which renders the proposal effective upon filing with the Commission. The Commission is publishing this notice to solicit comments on the proposed rule change, as amended, from interested parties.

¹⁵ *Id.*

¹⁶ 17 CFR 200.30-3(a)(12).

¹ 15 U.S.C. 78s(b)(1).

² 17 CFR 240.19b-4.

³ In Amendment No. 1, the Exchange replaced the first paragraph under Item 3 of the Form 19b-4 to correct a formatting error that appeared in the original filing.

⁴ 15 U.S.C. 78s(b)(3)(A)(ii).

⁵ 17 CFR 240.19b-4(f)(2).

I. Self-Regulatory Organization's Statement of the Terms of Substance of the Proposed Rule Change

The Exchange proposes to amend its Fee Schedule to adopt a fee cap on merger spread transactions. The text of the proposed rule change is available on the Exchange's Web site (<http://www.cboe.com>), at the Office of the Secretary, CBOE, and at the Commission.

II. Self-Regulatory Organization's Statement of the Purpose of, and Statutory Basis for, the Proposed Rule Change

In its filing with the Commission, CBOE included statements concerning the purpose of and basis for the proposed rule change and discussed any comments it received on the proposed rule change. The text of these statements may be examined at the places specified in Item IV below. CBOE has prepared summaries, set forth in Sections A, B, and C below, of the most significant aspects of such statements.

A. Self-Regulatory Organization's Statement of the Purpose of, and Statutory Basis for, Proposed Rule Change

1. Purpose

The Exchange currently caps market-maker, firm, and broker-dealer transaction fees associated with "dividend spread" transactions at \$2,000 for all dividend spread transactions executed on the same trading day in the same options class.⁶ According to the Exchange, a dividend spread is defined as any trade done to achieve a dividend arbitrage between any two deep-in-the-money options.

The Exchange proposes to amend its Fee Schedule to adopt a similar fee cap for "merger spread" transactions.⁷ Specifically, the Exchange proposes to cap market-maker, firm, and broker-dealer transaction fees at \$2,000 for all merger spread transactions executed on the same trading day in the same options class. Because the Exchange believes that merger spread transactions have similar economic risks and are

⁶ See Securities Exchange Act Release No. 51468 (April 1, 2005), 70 FR 17742 (April 7, 2005) (SR-CBOE-2005-18). The dividend spread fee cap program is in effect as a pilot program that will expire on September 1, 2005.

⁷ According to the Exchange, a merger spread transaction is defined as a transaction executed pursuant to a strategy involving the simultaneous purchase and sale of options of the same class and expiration date, but with different strike prices, followed by the exercise of the resulting long options position, each executed prior to the date on which shareholders of record are required to elect their respective form of consideration, *i.e.*, cash or stock.

¹² In approving this proposal, the Commission has considered its impact on efficiency, competition, and capital formation. 15 U.S.C. 78c(f).

¹³ 15 U.S.C. 78f(b)(5).

¹⁴ 15 U.S.C. 78s(b)(2).

executed in similar ways as dividend spread transactions, the Exchange believes adopting this fee cap would attract additional liquidity and should permit the Exchange to remain competitive.

Similar to the dividend spread fee cap program, the merger spread fee cap would be in effect as a pilot program that would expire on September 1, 2005. The Exchange represents that the proposed fee cap is similar to merger spread fee caps adopted by other exchanges.⁸

As is done under the current dividend spread fee cap program, the Exchange would rebate transaction fees for qualifying merger spread transactions. To qualify transactions for the cap, a rebate request form, along with supporting documentation (e.g., clearing firm transaction data), must be submitted to the Exchange within 30 days of the transactions.

2. Statutory Basis

The Exchange believes that the proposed rule change is consistent with Section 6(b) of the Act,⁹ in general, and Section 6(b)(4) of the Act,¹⁰ in particular, in that it provides for the equitable allocation of reasonable dues, fees, and other charges among CBOE members and other persons using its facilities.

B. Self-Regulatory Organization's Statement on Burden on Competition

CBOE does not believe that the proposed rule change will impose any burden on competition that is not necessary or appropriate in furtherance of purposes of the Act.

C. Self-Regulatory Organization's Statement on Comments on the Proposed Rule Change Received From Members, Participants, or Others

No written comments were solicited or received with respect to the proposed rule change.

III. Date of Effectiveness of the Proposed Rule Change and Timing for Commission Action

The foregoing rule change has become effective pursuant to Section 19(b)(3)(A) of the Act¹¹ and subparagraph (f)(2) of Rule 19b-4 thereunder¹² because it establishes or changes a due, fee, or other charge imposed by the Exchange.

At any time within 60 days of the filing of the proposed rule change, the Commission may summarily abrogate such rule change if it appears to the Commission that such action is necessary or appropriate in the public interest, for the protection of investors, or otherwise in furtherance of the purposes of the Act.¹³

IV. Solicitation of Comments

Interested persons are invited to submit written data, views and arguments concerning the foregoing, including whether the proposed rule change is consistent with the Act. Comments may be submitted by any of the following methods:

Electronic Comments

- Use the Commission's Internet comment form (<http://www.sec.gov/rules/sro.shtml>); or
- Send an e-mail to rule-comments@sec.gov. Please include File Number SR-CBOE-2005-42 on the subject line.

Paper Comments

- Send paper comments in triplicate to Jonathan G. Katz, Secretary, Securities and Exchange Commission, 100 F Street, NE., Washington, DC 20549-9303.

All submissions should refer to File Number SR-CBOE-2005-42. This file number should be included on the subject line if e-mail is used. To help the Commission process and review your comments more efficiently, please use only one method. The Commission will post all comments on the Commission's Internet Web site (<http://www.sec.gov/rules/sro.shtml>). Copies of the submission, all subsequent amendments, all written statements with respect to the proposed rule change that are filed with the Commission, and all written communications relating to the proposed rule change between the Commission and any person, other than those that may be withheld from the public in accordance with the provisions of 5 U.S.C. 552, will be available for inspection and copying in the Commission's Public Reference Room. Copies of such filing also will be

available for inspection and copying at the principal office of the Exchange. All comments received will be posted without change; the Commission does not edit personal identifying information from submissions. You should submit only information that you wish to make available publicly. All submissions should refer to File Number SR-CBOE-2005-42 and should be submitted on or before July 11, 2005.

For the Commission, by the Division of Market Regulation, pursuant to delegated authority.¹⁴

Margaret H. McFarland,

Deputy Secretary.

[FR Doc. E5-3158 Filed 6-17-05; 8:45 am]

BILLING CODE 8010-01-P

SECURITIES AND EXCHANGE COMMISSION

[Release No. 34-51824; File No. SR-CBOE-2005-45]

Self-Regulatory Organizations; Chicago Board Options Exchange, Incorporated; Notice of Filing and Immediate Effectiveness of a Proposed Rule Change To Modify the Designated Primary Market-Maker Participation Entitlement for Orders Specifying a Preferred DPM

June 10, 2005.

Pursuant to Section 19(b)(1) of the Securities Exchange Act of 1934 ("Act")¹ and Rule 19b-4 thereunder,² notice is hereby given that on June 6, 2005, the Chicago Board Options Exchange, Incorporated ("CBOE" or "Exchange") filed with the Securities and Exchange Commission ("Commission") the proposed rule change as described in Items I and II below, which Items have been prepared by the CBOE. The CBOE filed the proposal pursuant to Section 19(b)(3)(A) of the Act,³ and Rule 19b-4(f)(6) thereunder,⁴ which renders the proposal effective upon filing with the Commission.⁵ The Commission is publishing this notice to solicit comments on the proposed rule change from interested persons.

¹ 17 CFR 200.30-3(a)(12).

² 15 U.S.C. 78s(b)(1).

³ 17 CFR 240.19b-4.

⁴ 15 U.S.C. 78s(b)(3)(A).

⁵ 17 CFR 240.19b-4(f)(6).

⁶ The Exchange provided the Commission with written notice of its intention to file the proposed rule change on June 3, 2005. The Exchange has requested that the Commission waive the 30-day operative delay. 17 CFR 240.19b-4(f)(6)(iii).

⁸ See Securities Exchange Act Release Nos. 51596 (April 21, 2005), 70 FR 22381 (April 29, 2005) (SR-PHLX-2005-19) and 51787 (June 6, 2005), 70 FR 34174 (June 13, 2005) (SR-PCX-2005-65).

⁹ 15 U.S.C. 78f(b).

¹⁰ 15 U.S.C. 78f(b)(4).

¹¹ 15 U.S.C. 78s(b)(3)(A).

¹² 17 CFR 240.19b-4(f)(2).

¹³ The effective date of the original proposed rule change is May 23, 2005, the date of the original filing, and the effective date of the amendment is May 31, 2005, the date of filing of Amendment No. 1. For purposes of calculating the 60-day period within which the Commission may summarily abrogate the proposed rule change, as amended, under Section 19(b)(3)(C) of the Act, the Commission considers the period to commence on May 31, 2005, the date on which the Exchange submitted Amendment No. 1. See 15 U.S.C. 78s(b)(3)(C).

I. Self-Regulatory Organization's Statement of the Terms of Substance of the Proposed Rule Change

The CBOE proposes to modify the Designated Primary Market-Maker ("DPM") participation entitlement for orders specifying a Preferred DPM. Proposed new language is in *italics*; proposed deletions are in [brackets].

Rule 8.87 Participation Entitlements of DPMs and e-DPMs

(a) Subject to the review of the Board of Directors, the MTS Committee may establish from time to time a participation entitlement formula that is applicable to all DPMs.

(b) The participation entitlement for DPMs and e-DPMs (as defined in Rule 8.92) shall operate as follows:

(1) Generally.

(i) To be entitled to a participation entitlement, the DPM/e-DPM must be quoting at the best bid/offer on the Exchange.

(ii) A DPM/e-DPM may not be allocated a total quantity greater than the quantity that the DPM/e-DPM is quoting at the best bid/offer on the Exchange.

(iii) The participation entitlement is based on the number of contracts remaining after all public customer orders in the book at the best bid/offer on the Exchange have been satisfied.

(2) Participation Rates applicable to DPM Complex. The collective DPM/e-DPM participation entitlement shall be: 50% when there is one Market-Maker also quoting at the best bid/offer on the Exchange; 40% when there are two Market-Makers also quoting at the best bid/offer on the Exchange; and, 30% when there are three or more Market-Makers also quoting at the best bid/offer on the Exchange.

(3) Allocation of Participation Entitlement Between DPMs and e-DPMs. The participation entitlement shall be as follows: If the DPM and one or more e-DPMs are quoting at the best bid/offer on the Exchange, the e-DPM participation entitlement shall be one-half (50%) of the total DPM/e-DPM entitlement and shall be divided equally by the number of e-DPMs quoting at the best bid/offer on the Exchange. The remaining half shall be allocated to the DPM. If the DPM is not quoting at the best bid/offer on the Exchange and one or more e-DPMs are quoting at the best bid/offer on the Exchange, then the e-DPMs shall be allocated the entire participation entitlement (divided equally between them). If no e-DPMs are quoting at the best bid/offer on the Exchange and the DPM is quoting at the best bid/offer on the Exchange, then the

DPM shall be allocated the entire participation entitlement. If only the DPM and/or e-DPMs are quoting at the best bid/offer on the Exchange (with no Market-Makers at that price), the participation entitlement shall not be applicable and the allocation procedures under Rule 6.45A shall apply.

(4) Allocation of Participation Entitlement Between DPMs and e-DPMs for Orders Specifying a Preferred DPM. Notwithstanding the provisions of subparagraph (b)(3) above, the Exchange may allow, on a class-by-class basis, for the receipt of marketable orders, through the Exchange's Order Routing System when the Exchange's disseminated quote is the NBBO, that carry a designation from the member transmitting the order that specifies a DPM or e-DPM in that class as the "Preferred DPM" for that order. In such cases and after the provisions of subparagraph (b)(1)(i) and (iii) above have been met, then the *Preferred DPM participation entitlement shall be 50% when there is one Market-Maker also quoting at the best bid/offer on the Exchange; 40% when there are two Market-Makers also quoting at the best bid/offer on the Exchange; and, 30% when there are three or more Market-Makers also quoting at the best bid/offer on the Exchange, [participation entitlement applicable to the DPM Complex (as set forth in subparagraph (b)(2) above) shall be allocated to the Preferred DPM] subject to the following:*

[(i) if the Preferred DPM is an e-DPM and the DPM is also quoting at the best bid/offer on the Exchange, then $\frac{2}{3}$ of the participation entitlement shall be allocated to the Preferred DPM and the balance of the participation entitlement shall be allocated to the DPM;

(ii) if the Preferred DPM is an e-DPM and the DPM is not quoting at the best bid/offer on the Exchange but one or more e-DPMs are also quoting at the best bid/offer on the Exchange, then $\frac{2}{3}$ of the participation entitlement shall be allocated to the Preferred DPM and the balance of the participation entitlement shall be divided equally between the remaining e-DPMs also quoting at the best bid/offer on the Exchange;

(iii) if the Preferred DPM is the DPM and one or more e-DPMs are also quoting at the best bid/offer on the Exchange, then $\frac{2}{3}$ of the participation entitlement shall be allocated to the Preferred DPM and the balance of the participation entitlement shall be divided equally between the e-DPMs quoting at the best bid/offer on the Exchange;]

[(iv)] (i) if the Preferred DPM is not quoting at the best bid/offer on the

Exchange then the participation entitlement set forth in subparagraph (b)(3) above shall apply; and

[(v) if only members of the DPM Complex are quoting at the best bid/offer on the Exchange then the participation entitlement applicable to the Preferred DPM shall be: 50% when there is one other member of the DPM Complex also quoting at the best bid/offer on the Exchange; 40% when there are two other members of the DPM Complex quoting at the best bid/offer on the Exchange; and, 30% when there are three or more members of the DPM Complex also quoting at the best bid/offer on the Exchange. The other members of the DPM Complex shall not receive a participation entitlement and the allocation procedures under Rule 6.45A shall apply; and]

[(vi)] (ii) in no case shall the Preferred DPM [a DPM/e-DPM] be allocated, pursuant to this participation right, a total quantity greater than the quantity that the Preferred DPM [DPM/e-DPM] is quoting at the best bid/offer on the Exchange.

The Preferred DPM participation entitlement set forth in subparagraph (b)(4) of this Rule shall be in effect until June 2, 2006 on a pilot basis.

* * * Interpretations and Policies

.01 Notwithstanding subparagraph (b)(2) above, the Exchange may establish a lower DPM Complex Participation Rate on a product-by-product basis for newly-listed products or products that are being allocated to a DPM trading crowd for the first time. Notification of such lower participation rate shall be provided to members through a Regulatory Circular.

* * * * *

II. Self-Regulatory Organization's Statement of the Purpose of, and Statutory Basis for, the Proposed Rule Change

In its filing with the Commission, the CBOE included statements concerning the purpose of and basis for the proposed rule change and discussed any comments it received on the proposed rule change. The text of these statements may be examined at the places specified in Item IV below. The CBOE has prepared summaries, set forth in Sections A, B, and C below, of the most significant aspects of such statements.

A. Self-Regulatory Organization's Statement of the Purpose of, and Statutory Basis for, the Proposed Rule Change

1. Purpose

CBOE Rule 8.87 governs the participation entitlement of DPMs and e-DPMs (the "DPM Complex"). CBOE Rule 8.87(b)(2) states the actual participation entitlement percentages applicable to the DPM Complex, which are tiered to take into account the number of non-DPM Market-Makers also quoting at the best price. The participation entitlement percentages are as follows: 50% when there is one Market-Maker also quoting at the best bid/offer on the Exchange; 40% when there are two Market-Makers also quoting at the best bid/offer on the Exchange; and, 30% when there are three or more Market-Makers also quoting at the best bid/offer on the Exchange.

The CBOE recently obtained approval of a filing adopting a Preferred DPM Program.⁶ Under that program, order providers can send an order to the Exchange designating a "Preferred DPM" from among the DPM Complex. If the Preferred DPM is quoting at the National Best Bid or Offer ("NBBO") at the time the order is received on the CBOE, the Preferred DPM is entitled to $\frac{2}{3}$ of the participation entitlement described above. The Philadelphia Stock Exchange ("Phlx") recently obtained approval of a directed order program that allows the directed order recipient to receive a 40% participation entitlement on designated orders received while that entity is quoting at the NBBO.⁷ The purpose of this filing is to remain competitive with the Phlx directed order program.

This proposal increases the participation entitlement applicable to Preferred DPMs from $\frac{2}{3}$ of the "regular" participation entitlement to the entire participation entitlement. Thus, the Preferred DPM participation entitlement shall be 50% when there is one Market-Maker also quoting at the best bid/offer on the Exchange; 40% when there are two Market-Makers also quoting at the best bid/offer on the Exchange; and, 30% when there are three or more Market-Makers also quoting at the best bid/offer on the Exchange. The proposal does not in any way modify the percentage of an order that is available to non-DPM quoters while allowing the

Exchange's program to be more competitive with the Phlx directed order program. The CBOE notes that other exchanges have rules that provide specialist entitlements as high as 40% (with three or more market-makers also quoting at the same price),⁸ and that the Preferred DPM Program is operating as a one-year pilot program.

2. Statutory Basis

The Exchange believes the proposed rule change is consistent with Section 6(b) of the Act,⁹ in general, and furthers the objectives of Section 6(b)(5),¹⁰ in particular, in that it is designed to promote just and equitable principles of trade, to remove impediments to and perfect the mechanism of a free and open market and a national market system, and, in general, to protect investors and the public interest.

B. Self-Regulatory Organization's Statement on Burden on Competition

The CBOE does not believe that the proposed rule change will impose any burden on competition that is not necessary or appropriate in the furtherance of the purposes of the Act.

C. Self-Regulatory Organization's Statement on Comments on the Proposed Rule Change Received From Members, Participants, or Others

No written comments were solicited or received with respect to the proposed rule change.

III. Date of Effectiveness of the Proposed Rule Change and Timing for Commission Action

Because the foregoing proposed rule change: (1) Does not significantly affect the protection of investors or the public interest; (2) does not impose any significant burden on competition; and (3) by its terms does not become operative for 30 days after the date of this filing, or such shorter time as the Commission may designate if consistent with the protection of investors and the public interest, the proposed rule change has become effective pursuant to Section 19(b)(3)(A) of the Act¹¹ and Rule 19b-4(f)(6) thereunder.¹² At any time within 60 days of the filing of the proposed rule change, the Commission may summarily abrogate such rule change if it appears to the Commission that such action is necessary or appropriate in the public interest, for

the protection of investors, or otherwise in furtherance of the purposes of the Act.

The CBOE has requested that the Commission waive the 30-day operative delay. The Commission believes it is consistent with the protection of investors and the public interest for the CBOE to implement the proposed rule change without delay. For this reason, the Commission designates the proposal to be effective and operative upon filing with the Commission.¹³

IV. Solicitation of Comments

Interested persons are invited to submit written data, views, and arguments concerning the foregoing, including whether the proposed rule change is consistent with the Act. Comments may be submitted by any of the following methods:

Electronic Comments

- Use the Commission's Internet comment form (<http://www.sec.gov/rules/sro.shtml>); or
- Send an e-mail to rule-comments@sec.gov. Please include File No. SR-CBOE-2005-45 on the subject line.

Paper Comments

- Send paper comments in triplicate to Jonathan G. Katz, Secretary, Securities and Exchange Commission, Station Place, 100 F Street, NE., Washington, DC 20549-9303.

All submissions should refer to File No. SR-CBOE-2005-45. This file number should be included on the subject line if e-mail is used. To help the Commission process and review your comments more efficiently, please use only one method. The Commission will post all comments on the Commission's Internet Web site (<http://www.sec.gov/rules/sro.shtml>). Copies of the submission, all subsequent amendments, all written statements with respect to the proposed rule change that are filed with the Commission, and all written communications relating to the proposed rule change between the Commission and any person, other than those that may be withheld from the public in accordance with the provisions of 5 U.S.C. 552, will be available for inspection and copying in the Commission's Public Reference Room, 100 F Street, NE., Washington, DC 20549. Copies of such filing will also be available for inspection and copying at the principal office of the CBOE. All

⁶ See Securities Exchange Act Release No. 51779 (June 2, 2005) (order approving SR-CBOE-2004-71).

⁷ See Securities Exchange Act Release No. 51759 (May 27, 2005), 70 FR 32860 (June 6, 2005) (order approving SR-Phlx-2004-91).

⁸ See Phlx Rule 1014(g)(viii), Pacific Exchange Rule 6.82(d)(2), and American Stock Exchange Rule 935-ANTE(a)(4).

⁹ 15 U.S.C. 78f(b).

¹⁰ 15 U.S.C. 78f(b)(5).

¹¹ 15 U.S.C. 78s(b)(3)(A).

¹² 17 CFR 240.19b-4(f)(6).

¹³ For purposes only of waiving the 30-day operative delay, the Commission has considered the proposed rule's impact on efficiency, competition, and capital formation. See 15 U.S.C. 78c(f).

comments received will be posted without change; the Commission does not edit personal identifying information from submissions. You should submit only information that you wish to make available publicly. All submissions should refer to File No. SR-CBOE-2005-45 and should be submitted on or before July 11, 2005.

For the Commission, by the Division of Market Regulation, pursuant to delegated authority.¹⁴

Margaret H. McFarland,

Deputy Secretary.

[FR Doc. E5-3163 Filed 6-17-05; 8:45 am]

BILLING CODE 8010-01-P

SECURITIES AND EXCHANGE COMMISSION

[Release No. 34-51835; File No. SR-ISE-2004-16]

Self-Regulatory Organizations; International Securities Exchange, Inc.; Notice of Filing of Proposed Rule Change and Amendment No. 1 Thereto Establishing a Directed Order Process

June 13, 2005.

Pursuant to Section 19(b)(1) of the Securities Exchange Act of 1934 ("Act")¹ and Rule 19b-4 thereunder,² notice is hereby given that on May 20, 2004, the International Securities Exchange, Inc. ("ISE" or "Exchange") filed with the Securities and Exchange Commission ("Commission") the proposed rule change as described in Items I, II, and III below, which Items have been prepared by the ISE. On April 26, 2005, the ISE filed Amendment No. 1 to the proposed rule change.³ The Commission is publishing this notice to solicit comments on the proposed rule change, as amended, from interested persons.

I. Self-Regulatory Organization's Statement of the Terms of Substance of the Proposed Rule Change

The ISE proposes to adopt new ISE Rule 811 to allow Exchange market makers to receive Public Customer Orders directed to them from Electronic Access Members ("EAMs") through the Exchange's system ("Directed Orders"). Proposed new language is in *italics*.

Rule 811. Directed Orders

(a) Definitions.

(1) A "Directed Order" is a Public Customer Order routed from an Electronic Access Member to an Exchange market maker through the Exchange's System.

(2) A "Directed Market Maker" is a market maker that receives a Directed Order.

(3) The "NBBO" is defined in Rule 1900.

(b) Exchange market makers may only receive and handle orders on an agency basis if they are Directed Orders and only in the manner prescribed in this Rule 811. A market maker can elect whether or not to accept Directed Orders on a daily basis. If a market maker elects to be a Directed Market Maker, it must accept Directed Orders from all Electronic Access Members. A Directed Market Maker cannot reject a Directed Order.

(c) Obligations of Directed Market Makers.

(1) Directed Market Makers must hold the interests of orders entrusted to them above their own interests and fulfill in a professional manner all other duties of an agent, including, but not limited to, ensuring that each such order, regardless of its size or source, receives proper representation and timely, best possible execution in accordance with the terms of the order and the rules and policies of the Exchange.

(2) Directed Market Makers must ensure that their acceptance and execution of Directed Orders as agent are in compliance with applicable Federal and Exchange rules and policies.

(3) Within three (3) seconds of receipt of a Directed Order, Directed Market Makers must either enter the Directed Order into the PIM pursuant to Rule 723 or release the Directed Order to the Exchange's limit order book pursuant to paragraph (e) of this Rule.

(i) If the Directed Market Maker is quoting at the NBBO on the opposite side of the Directed Order, the Directed Market Maker is prohibited from adjusting the price of its quote to a price that is less favorable than the price available at the NBBO or reducing the

size of its quote prior to submitting the Directed Order to the PIM, unless such quote change is the result of an automated quotation system that operates independently from the existence or non-existence of a pending Directed Order. Otherwise changing a quote on the opposite side of the Directed Order except as specifically permitted herein will be a violation of Rule 400 (Just and Equitable Principles of Trade).

(ii) If a Directed Market Maker fails to either enter a Directed Order into the PIM or release the order within three (3) seconds of its receipt, the Directed Order will be automatically released by the System and processed according to paragraph (e) of this Rule.

(d) Directed Market Maker Guarantee. If the Directed Market Maker is quoting at the NBBO on the opposite side of the market from a Directed Order at the time the Directed Order is received by the Directed Market Maker, and the Directed Order is marketable, the System will automatically guarantee execution of the Directed Order against the Directed Market Maker at the price and the size of its quote (the "Guarantee"). The Directed Market Maker cannot alter the Guarantee.

(e) Except as provided in this paragraph (e), when a Directed Order is released, the System processes the order in the same manner as any other order received by the Exchange. Directed Orders will not be automatically executed at a price that is inferior to the NBBO and, except as provided in subparagraph (e)(3), will be handled pursuant to Rule 803(c)(2) when the ISE best bid or offer is inferior to the NBBO.

(1) A marketable Directed Order will be matched against orders and quotes according to Rule 713 except that, at any given price level, the Directed Market Maker will be last in priority.

(i) If, after all other interest at the NBBO is executed in full, there is any remaining unexecuted quantity of the Directed Order and the Directed Market Maker is quoting at the NBBO or a Guarantee exists, a broadcast message will be sent to all Members. After three (3) seconds, any additional interest at the same or better price will be executed according to Rule 713.

(ii) If there continues to be any remaining unexecuted quantity of the Directed Order, it will be executed against any interest at the same price from the Directed Market Maker. If a Guarantee exists at that price, an execution will occur for at least the size of the Guarantee.

(iii) If there continues to be any remaining unexecuted quantity of the Directed Order and the Directed Order

¹⁴ 17 CFR 200.30-3(a)(12).

¹⁵ 15 U.S.C. 78s(b)(1).

² 17 CFR 240.19b-4.

³ Amendment No. 1 replaced and superseded the original filing in its entirety. Amendment No. 1 to the proposed rule change: (i) added a provision to the proposed rule change related to the processing of Directed Orders when the market maker to which it is directed is the primary market maker in the option and the ISE's bid/offer is inferior to the national best bid/offer; (ii) revised the purpose section of the filing and made certain non-substantive changes to the text of the proposed rule change; and (iii) removed a proposed amendment to ISE Rule 810 related to information barriers to allow market maker to handle directed order because the Exchange has received approval of a separate proposed rule change to ISE Rule 810 in this respect (see Securities Exchange Act Release No. 50433 (September 23, 2004), 69 FR 58563 (September 30, 2004) (SR-ISE-2004-18)).

is marketable at the next price level without trading through the NBBO, the Directed Order will be allocated according to Rule 713 except that the Directed Market Maker will be last in priority. If an execution at any given price level would cause the Directed Order to be executed at a price inferior to the NBBO, the order will be presented to the PMM for handling according to Rule 803(c)(2).

(iv) Subparagraph (e)(1)(iii) will be repeated until the Directed Order is (A) fully executed, (B) presented to the Primary Market Maker for handling according to Rule 803(c)(2), or (C) no longer marketable, in which case it will be placed on the limit order book.

(2) If a Directed Order is not marketable at the time it is released:

(i) If a Guarantee exists, a broadcast message will be sent to all Members. After three (3) seconds, the Directed Order will be executed against any contra interest at the Guarantee price or better according to Rule 713. Thereafter, the Directed Order will be executed against the Directed Market Maker for at least the size of the Guarantee. If there is any remaining unexecuted quantity of the Directed Order, it will be placed on the Exchange's limit order book.

(ii) If no Guarantee exists, the Directed Order will be placed on the Exchange's limit order book. In this case, the Directed Market Maker may not enter a proprietary order to execute against the Directed Order during the three (3) seconds following the release of the Directed Order.

(3) If, at the time a Directed Order is released by the Directed Market Maker, the Directed Order is marketable but the ISE best bid or offer is inferior to the NBBO, and the Directed Market Maker is the Primary Market Maker in the option class for the Directed Order, then a broadcast message shall be sent to all Members displaying the Directed Order. After three (3) seconds, the Directed Order will be executed against any contra interest at the NBBO price or better according to Rule 713, except that the Directed Market Maker will be last in priority. Thereafter, if there is any remaining unexecuted quantity of the Directed Order, it will be presented to the Primary Market Maker for handling according to Rule 803(c)(2).

* * * * *

II. Self-Regulatory Organization's Statement of the Purpose of, and Statutory Basis for, the Proposed Rule Change

In its filing with the Commission, the Exchange included statements concerning the purpose of and basis for the proposed rule change and discussed

any comments it had received on the proposed rule change. The text of these statements may be examined at the places specified in Item IV below. The ISE has prepared summaries, set forth in Sections A, B, and C below, of the most significant aspects of such statements.

A. Self-Regulatory Organization's Statement of the Purpose of, and Statutory Basis for, the Proposed Rule Change

1. Purpose

The Exchange proposes to adopt new ISE Rule 811 to allow Exchange market makers to receive Directed Orders. A Directed Order is defined as a Public Customer Order routed from an EAM to an Exchange market maker through the Exchange's system.⁴ A "Directed Market Maker" is an Exchange market maker that receives a Directed Order. Market makers may elect whether to receive Directed Orders on a daily basis. Directed Market Makers must accept Directed Orders from all EAMs and may not reject any Directed Orders. Directed Market Makers must either enter Directed Orders into the Price Improvement Mechanism ("PIM") pursuant to ISE Rule 723 or release the Directed Orders to the Exchange's limit order book. The ISE would give a Directed Market Maker three seconds to take one of these actions, after which the Exchange system would automatically release the Directed Order. Directed Orders are anonymous, so that Directed Market Makers would not know which EAM routed a Directed Order.

When a Directed Order is not entered into the PIM, and thus is released to the Exchange's limit order book, the Exchange would process the order like any other incoming order, other than as follows:

i. When an order is directed to a market maker that is quoting at the national best bid or offer ("NBBO"), the system automatically guarantees the price and size of the market maker's quote (the "Guarantee"). This assures that if the price or size of the Directed Market Maker's quote changes between the time the Directed Order was received and the time that it is released (because, for example, there is a change in the market for the underlying security), the Directed Order is not disadvantaged.

ii. At any given price level, a Directed Order is executed according to the Exchange's standard allocation process provided in ISE Rule 713, except that

the Directed Market Maker is put last in priority and the Directed Order is exposed to all Members for three seconds prior to executing any portion of the Directed Order against the Directed Market Maker. This assures that the Directed Market Maker does not benefit from the fact that it had knowledge of the Directed Order prior to its entry into the Exchange's system.

Applying these principles, a marketable Directed Order released into the Exchange's system would trade as follows:

- When the Directed Order is released, the system would execute the Directed Order pursuant to ISE Rule 713, initially excluding the Directed Market Maker.

- If there is any remaining unexecuted quantity of the Directed Order, and the Directed Market Maker is quoting at the same price or there is a Guarantee at the same price, the system would generate a broadcast message to all Members, who would have three seconds to respond with additional interest at the same or a better price.

- After this three second exposure, the system would again execute the Directed Order pursuant to the ISE Rule 713 algorithm against all interest except for the Directed Market Maker. If there continues to be any remaining unexecuted quantity of the Directed Order, the system would automatically execute the Directed Order against the Directed Market Maker's quote and/or Guarantee (if the Directed Market Maker has a quote at the same price as the Guarantee for a greater size, the order would receive the greater size).

- Following any execution against the Directed Market Maker, and if there continues to be any unexecuted quantity: If the order is not marketable, the system would place the order on the limit order book; or, if the order is marketable at that price without trading through the NBBO, execute the order at the next price level. At each such price level, the Directed Order is executed pursuant to the ISE Rule 713 algorithm except that the Directed Market Maker is put last in priority.

- At each price level, the Exchange's system would assure that the Directed Order is not automatically executed at a price that is inferior to the NBBO. When the ISE best bid or offer is inferior to the NBBO, marketable orders would be presented to the Primary Market Maker ("PMM") for handling pursuant to ISE Rule 803(c)(2), unless the PMM is the Directed Market Maker that released the Directed Order, in which case the Directed Order would first be exposed to all Members, as described below.

⁴ The proposal is similar to Chapter VI, Section 5(b) and (c), and Section 10, of the rules of the Boston Stock Exchange.

When a non-marketable Directed Order is released and a Guarantee exists, the Exchange's system would broadcast a message to all Members for three seconds before executing the Directed Order against the Guarantee. This would happen where the Directed Market Maker was quoting at the NBBO at the time that a marketable Directed Order was received, but the NBBO moved prior to the release of the Directed Order so that the Directed Order was no longer marketable.

If, at the time a Directed Order is released by the Directed Market Maker, the Directed Order is marketable but the ISE best bid or offer is inferior to the NBBO, and the Directed Market Maker is the PMM in the option class for the Directed Order, then a broadcast message would be sent to all Members displaying the Directed Order. After three (3) seconds, the Directed Order would be executed against any contra interest at the NBBO price or better according to ISE Rule 713, except that the PMM would be last in priority. Thereafter, if there is any remaining unexecuted quantity of the Directed Order, it would be presented to the PMM for handling according to ISE Rule 803(c)(2). This assures that the PMM does not benefit from the fact that it had knowledge of the Directed Order prior to its entry into the Exchange's system by allowing other market participants an opportunity to execute against the Directed Order before the PMM.

In addition to the procedures described above, the proposed rule contains two restrictions regarding Directed Market Makers. First, if the Directed Market Maker is quoting at the NBBO on the opposite side of the Directed Order, the Directed Market Maker is prohibited from adjusting the price of its quote to a price that is less favorable than the price available at the NBBO or reducing the size of its quote prior to submitting the Directed Order to the PIM, unless such quote change is the result of an automated quotation system that operates independently from the existence or non-existence of a pending Directed Order. Otherwise changing a quote on the opposite side of the Directed Order except as specifically permitted herein would be a violation of ISE Rule 400 (Just and Equitable Principles of Trade). The Exchange would conduct routine surveillance of such quote changes to identify potential violations of ISE Rule 400.

The purpose of this limitation is to prohibit a Directed Market Maker from manipulating the market by moving the NBBO to an inferior price prior to submitting an order into the PIM. The occasion where this type of

manipulation might be possible is remote, as a Directed Market Maker would have to be the only market maker quoting at the NBBO in the national market system. Nevertheless, we believe the restriction is carefully tailored so that price discovery through the use of automated quotation systems would not be unnecessarily disrupted, while assuring that Directed Market Makers are not permitted to disadvantage orders they represent as agent.

The second restriction applies when a Directed Market Maker releases a non-marketable Directed Order without a Guarantee (that is, where the Directed Market Maker is not quoting at the NBBO). In that situation, the Directed Market Maker must wait at least three seconds before entering a contra order to execute against the Directed Order as principal. The purpose of this restriction is to allow other market participants an opportunity to execute against the Directed Order before the Directed Market Maker who had knowledge of the Directed Order before it was released.

2. Statutory Basis

The ISE believes the basis under the Exchange Act for this proposed rule change is the requirement under Section 6(b)(5) that an exchange have rules that are designed to foster cooperation and coordination with persons engaged in regulating, clearing, settling, processing information with respect to, and facilitating transaction in securities, to remove impediments to and perfect the mechanism for a free and open market and a national market system, and, in general, to protect investors and the public interest. In particular, this proposed rule change would allow the Exchange to better compete with other options exchanges, while assuring the fair handling of Directed Orders.

B. Self-Regulatory Organization's Statement on Burden on Competition

The ISE does not believe that the proposed rule change, as amended, would impose any burden on competition not necessary or appropriate in furtherance of the purposes of the Act.

C. Self-Regulatory Organization's Statement on Comments on the Proposed Rule Change Received From Members, Participants, or Others

The Exchange has not solicited, and does not intend to solicit, comments on this proposed rule change. The Exchange has not received any unsolicited written comments from members or other interested parties.

III. Date of Effectiveness of the Proposed Rule Change and Timing for Commission Action

Within 35 days of the date of publication of this notice in the **Federal Register** or within such longer period (i) as the Commission may designate up to 90 days of such date if it finds such longer period to be appropriate and publishes its reasons for so finding, or (ii) as to which the ISE consents, the Commission will:

(A) By order approve such proposed rule change; or

(B) Institute proceedings to determine whether the proposed rule change should be disapproved.

IV. Solicitation of Comments

Interested persons are invited to submit written data, views, and arguments concerning the foregoing, including whether the proposed rule change, as amended, is consistent with the Act. Comments may be submitted by any of the following methods:

Electronic Comments

- Use the Commission's Internet comment form (<http://www.sec.gov/rules/sro.shtml>); or
- Send an e-mail to rule-comments@sec.gov. Please include File Number SR-ISE-2004-16 on the subject line.

Paper Comments

- Send paper comments in triplicate to Jonathan G. Katz, Secretary, Securities and Exchange Commission, Station Place, 100 F Street, NE., Washington, DC 20549-9303.

All submissions should refer to File Number SR-ISE-2004-16. This file number should be included on the subject line if e-mail is used. To help the Commission process and review your comments more efficiently, please use only one method. The Commission will post all comments on the Commission's Internet Web site (<http://www.sec.gov/rules/sro.shtml>). Copies of the submission, all subsequent amendments, all written statements with respect to the proposed rule change that are filed with the Commission, and all written communications relating to the proposed rule change between the Commission and any person, other than those that may be withheld from the public in accordance with the provisions of 5 U.S.C. 552, will be available for inspection and copying in the Commission's Public Reference Section, 100 F Street, NE., Washington, DC 20549. Copies of such filing also will be available for inspection and copying at the principal office of the ISE. All

comments received will be posted without change; the Commission does not edit personal identifying information from submissions. You should submit only information that you wish to make publicly available. All submissions should refer to File Number SR-ISE-2004-16 and should be submitted on or before July 11, 2005.

For the Commission, by the Division of Market Regulation, pursuant to delegated authority.⁵

Margaret H. McFarland,
Deputy Secretary.

[FR Doc. E5-3179 Filed 6-17-05; 8:45 am]

BILLING CODE 8010-01-P

SECURITIES AND EXCHANGE COMMISSION

[Release No. 34-51825; File No. SR-NASD-2005-070]

Self-Regulatory Organizations; National Association of Securities Dealers, Inc.; Notice of Filing and Order Granting Accelerated Approval of Proposed Rule Change and Amendment No. 1 Thereto Relating to Rescinding the Pilot Rule in IM-10100(f) of the NASD Code of Arbitration Procedure Relating to the Waiver of the California Ethics Standards for Neutral Arbitrators in Contractual Arbitration

June 13, 2005.

Pursuant to Section 19(b)(1) of the Securities Exchange Act of 1934 ("Exchange Act")¹ and Rule 19b-4 thereunder,² notice is hereby given that on May 31, 2005 and on June 8, 2005 (Amendment No. 1), the National Association of Securities Dealers, Inc. ("NASD" or "Association") filed with the Securities and Exchange Commission ("SEC" or "Commission") the proposed rule change as described in Items I, II, and III below, which Items have been prepared by NASD. The Commission is publishing this notice to solicit comments on the proposed rule change from interested persons and is approving the proposal on an accelerated basis.

I. Self-Regulatory Organization's Statement of the Terms of Substance of the Proposed Rule Change

NASD is proposing to rescind the pilot rule in IM-10100(f) of the NASD Code of Arbitration Procedure relating to the waiver of the California Ethics Standards for Neutral Arbitrators in Contractual Arbitration.

Below is the text of the proposed rule change.³ Proposed new language is italicized; proposed deletions are in brackets.

* * * * *

IM-10100. Failure To Act Under Provisions of Code of Arbitration Procedure

It may be deemed conduct inconsistent with just and equitable principles of trade and a violation of Rule 2110 for a member or a person associated with a member to:

- (a) Through (c) No change
- (d) Fail to honor an award, or comply with a written and executed settlement agreement, obtained in connection with an arbitration submitted for disposition pursuant to the procedures specified by the National Association of Securities Dealers, Inc., the New York, American, Boston, Cincinnati, Chicago, or Philadelphia Stock Exchanges, the Pacific Exchange, Inc., the Chicago Board Options Exchange, the Municipal Securities Rulemaking Board, or pursuant to the rules applicable to the arbitration of disputes before the American Arbitration Association or other dispute resolution forum selected by the parties where timely motion has not been made to vacate or modify such award pursuant to applicable law; or
- (e) Fail to comply with a written and executed settlement agreement, obtained in connection with a mediation submitted for disposition pursuant to the procedures specified by the National Association of Securities Dealers, Inc.;

or

[(f) Fail to waive the California Rules of Court, Division VI of the Appendix, entitled, "Ethics Standards for Neutral Arbitrators in Contractual Arbitration" (the "California Standards"), if application of the California Standards has been waived by all parties to the dispute who are:

- (1) Customers with a claim against a member or an associated person;
- (2) Associated persons with a claim against a member or an associated person;
- (3) Members with a claim against another member; or
- (4) Members with a claim against an associated person that relates exclusively to a promissory note.

³ Corresponding changes reflecting the proposed rule change will be made to the NASD Code of Arbitration Procedure for Customer Disputes filed on October 15, 2003, and amended on January 3, 2005, January 19, 2005, and April 8, 2005 (SR-NASD-2003-158); and the NASD Code of Arbitration Procedure for Industry Disputes filed on January 16, 2004, and amended on February 26, 2004, January 3, 2005, and April 8, 2005 (SR-NASD-2004-011).

Written waiver by such parties shall constitute and operate as a waiver for all member firms or associated persons against whom the claim has been filed. This rule applies to claims brought in California against all member firms and associated persons, including terminated or otherwise inactive member firms or associated persons.] Remainder unchanged

* * * * *

II. Self-Regulatory Organization's Statement of the Purpose of, and Statutory Basis for, the Proposed Rule Change

In its filing with the Commission, NASD included statements concerning the purpose of and basis for the proposed rule change and discussed any comments it received on the proposed rule change. The text of these statements may be examined at the places specified in Item III below. NASD has prepared summaries, set forth in Sections (A), (B), and (C) below, of the most significant aspects of such statements.

(A) Self-Regulatory Organization's Statement of the Purpose of, and Statutory Basis for, the Proposed Rule Change

1. Purpose

The purpose of the proposed rule change is to rescind the pilot rule in IM-10100(f) of the NASD Code of Arbitration Procedure ("Code") relating to the waiver of the California Ethics Standards for Neutral Arbitrators in Contractual Arbitration ("Pilot Rule").

Effective July 1, 2002, the California Judicial Council ("Judicial Council") adopted a set of rules, "Ethics Standards for Neutral Arbitrators in Contractual Arbitration" ("California Standards"),⁴ which contain extensive disclosure and disqualification requirements for arbitrators. The California Standards imposed disclosure and disqualification requirements on arbitrators that conflict with the disclosure and disqualification rules of NASD and the New York Stock Exchange ("NYSE"). Because NASD could not both administer its arbitration program in accordance with its own rules and comply with the new California Standards at the same time, NASD initially suspended the appointment of arbitrators in cases in California, but offered parties several options for pursuing their cases.⁵

⁴ California Rules of Court, Division VI of the Appendix.

⁵ These measures included providing venue changes for arbitration cases, using non-California arbitrators when appropriate, and waiving administrative fees for NASD-sponsored mediations.

¹ 17 CFR 200.30-3(a)(12).

² 15 U.S.C. 78s(b)(1).

³ 17 CFR 240.19b-4.

In September 2002, NASD implemented a pilot rule providing that if parties to an arbitration who are customers (or, in certain circumstances, associated persons) waived application of the California Standards to their arbitration proceeding, then the firm would be required to waive the application of the California Standards.⁶ Under such a waiver, the arbitration proceeds under the existing NASD Code, which already contains extensive disclosure requirements and provisions for challenging arbitrators with potential conflicts of interest. In those cases where a waiver of the California Standards is not received, the appointment of arbitrators is temporarily postponed unless the parties agree to proceed in a non-California venue.

NASD also commenced litigation or became involved in a number of suits challenging the California Standards. On March 1, 2005, the United States Court of Appeals for the Ninth Circuit issued its decision in *Credit Suisse First Boston Corp. v. Grunwald*.⁷ The Ninth Circuit held that the Exchange Act preempts application of the California Standards to NASD arbitrations. On May 23, 2005, the Supreme Court of California also held that the Exchange Act preempts application of the California Standards to NASD-administered arbitrations.⁸

The Pilot Rule was originally approved for six months in September 2002.⁹ It was subsequently extended on several occasions and is now due to expire on September 30, 2005.¹⁰ NASD

has determined that the Pilot Rule should be rescinded prior to September 30, 2005, as it is no longer necessary. Specifically, with the recent decisions in *Grunwald* and *Jevne*, both the Ninth Circuit Court of Appeals and the California Supreme Court have found that the Exchange Act preempts the application of the California Standards to arbitrators in the NASD forum. Consequently, NASD believes that it can once again appoint arbitrators in California cases without requiring a waiver of the California Standards.

2. Statutory Basis

NASD believes that the proposed rule change is consistent with the provisions of Section 15A(b)(6) of the Exchange Act,¹¹ which requires, among other things, that NASD's rules must be designed to prevent fraudulent and manipulative acts and practices, to promote just and equitable principles of trade, and, in general, to protect investors and the public interest. Specifically, rescinding the Pilot Rule will benefit all users of the forum as it will allow NASD to process those arbitration cases that have not been paneled because the necessary waivers of the California Standards have not been received.

(B) Self-Regulatory Organization's Statement on Burden on Competition

NASD does not believe that the proposed rule change will result in any burden on competition that is not necessary or appropriate in furtherance of the purposes of the Exchange Act, as amended.

(C) Self-Regulatory Organization's Statement on Comments on the Proposed Rule Change Received From Members, Participants, or Others

Written comments on the proposed rule change were neither solicited nor received.

III. Solicitation of Comments

Interested persons are invited to submit written data, views and arguments concerning the foregoing, including whether the proposed rule change, as amended, is consistent with the Exchange Act. Comments may be submitted by any of the following methods:

Electronic Comments

- Use the Commission's Internet comment form (<http://www.sec.gov/rules/sro.shtml>); or
- Send an e-mail to rule-comments@sec.gov. Please include File

Number SR-NASD-2005-070 on the subject line.

Paper Comments

- Send paper comments in triplicate to Jonathan G. Katz, Secretary, Securities and Exchange Commission, 100 F Street, NE., Washington, DC 20549-9303.

All submissions should refer to File Number SR-NASD-2005-070. This file number should be included on the subject line if e-mail is used. To help the Commission process and review your comments more efficiently, please use only one method. The Commission will post all comments on the Commission's Internet Web site (<http://www.sec.gov/rules/sro.shtml>). Copies of the submission, all subsequent amendments, all written statements with respect to the proposed rule change that are filed with the Commission, and all written communications relating to the proposed rule change between the Commission and any person, other than those that may be withheld from the public in accordance with the provisions of 5 U.S.C. 552, will be available for inspection and copying in the Commission's Public Reference Room, 100 F Street, NE., Washington, DC 20549. Copies of such filings also will be available for inspection and copying at the principal offices of the NASD. All comments received will be posted without change; the Commission does not edit personal identifying information from submissions. You should submit only information that you wish to make available publicly. All submissions should refer to the File Number SR-NASD-2005-070 and should be submitted on or before July 11, 2005.

IV. Commission's Findings and Order Granting Accelerated Approval of Proposed Rule Change

The Commission finds that the proposed rule change is consistent with the requirements of the Exchange Act and the rules and regulations thereunder, applicable to a self-regulatory organization.¹² In particular, the Commission finds that the proposed rule change is consistent with Section 15A(b)(6) of the Exchange Act,¹³ which requires, among other things, that NASD's rules must be designed to prevent fraudulent and manipulative acts and practices, to promote just and equitable principles of trade, and, in

⁶ This rule has been expanded on several occasions. Originally, the pilot rule only applied to claims by customers, or by associated persons asserting a statutory employment discrimination claim against a member, and required a written waiver by the industry respondents. In July 2003, NASD expanded the scope of the pilot rule to include all claims by associated persons against another associated person or a member. At the same time, the rule was amended to provide that when a customer, or an associated person with a claim against a member or another associated person, agrees to waive the application of the California Standards, all respondents that are members or associated persons will be deemed to have waived the application of the standards as well. The July 2003 amendment also clarified that the pilot rule applies to terminated members and associated persons. Exchange Act Release No. 48187 (July 16, 2003), 68 FR 43553 (July 23, 2003). In October 2003, the rule was further amended to include claims by members against other members, and claims by members against associated persons that relate exclusively to promissory notes. Exchange Act Release No. 48711 (October 29, 2003), 68 FR 62490 (November 4, 2003).

⁷ 400 F.3d 1119 (9th Cir. 2005).

⁸ *Jevne v. The Superior Court of Los Angeles County*, S121532 (CA Sup. Ct. May 23, 2005).

⁹ See Exchange Act Release No. 46562 (September 26, 2002), 67 FR 62085 (October 3, 2002).

¹⁰ See Exchange Act Release No. 51213 (February 16, 2005), 70 FR 8862 (February 23, 2005).

¹¹ 15 U.S.C. 78o-3(b)(6).

¹² In approving this proposal, the Commission has considered its impact on efficiency, competition, and capital formation. 15 U.S.C. 78c(f).

¹³ 15 U.S.C. 78o-3(b)(6).

general, to protect investors and the public interest. The Commission notes that rescinding the Pilot Rule will benefit all users of the forum as it will allow NASD to process those arbitration cases that have not proceeded because the necessary waivers of the California Standards have not been received.

After careful consideration, the Commission finds good cause, pursuant to Section 19(b)(2) of the Exchange Act,¹⁴ for approving the proposed rule change prior to the thirtieth day after the date of publication of notice in the **Federal Register**. In recent decisions in *Grunwald* and *Jevne*, both the Ninth Circuit Court of Appeals and the California Supreme Court have found that the Exchange Act preempts the application of the California Standards to arbitrations in the NASD forum. Consequently, the Commission believes that the NASD can once again appoint arbitrators in California cases without requiring a waiver of the California Standards. Accordingly, the Commission believes that there is good cause, consistent with Section 15A(b)(6) of the Exchange Act,¹⁵ to approve the proposal on an accelerated basis.

V. Conclusion

It is therefore ordered, pursuant to Section 19(b)(2) of the Exchange Act,¹⁶ that the proposed rule change (SR-NASD-2005-070) is hereby approved on an accelerated basis.

For the Commission, by the Division of Market Regulation, pursuant to delegated authority.¹⁷

Margaret H. McFarland,

Deputy Secretary.

[FR Doc. E5-3151 Filed 6-17-05; 8:45 am]

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SECURITIES AND EXCHANGE COMMISSION

[Release No. 34-51813, File No. SR-NYSE-2004-20]

Self-Regulatory Organizations; New York Stock Exchange, Inc.; Order Approving Proposed Rule Change and Amendment Nos. 1, 2, 4, 5, 6, and 7 Thereto and Notice of Filing and Order Granting Accelerated Approval to Amendment No. 8 Thereto to Amend Its Original and Continued Quantitative Listing Standards

June 9, 2005.

I. Introduction

On April 13, 2004, the New York Stock Exchange, Inc. ("NYSE" or "Exchange") filed with the Securities and Exchange Commission ("Commission" or "SEC"), pursuant to Section 19(b)(1) of the Securities Exchange Act of 1934 ("Act")¹ and Rule 19b-4 thereunder,² a proposed rule change to amend Sections 102.01C, 103.01B, 802.01A, 802.01B, 802.01C, 802.02, and 802.03 of the NYSE's Listed Company Manual ("Listed Company Manual") regarding the minimum numerical original and continued listing standards. On May 20, 2004, NYSE submitted Amendment No. 1 to the proposed rule change.³ The proposed rule change, as amended by Amendment No. 1, was published for comment in the **Federal Register** on July 2, 2004.⁴ The Commission received three comment letters on the proposed rule change, as amended by Amendment No. 1.⁵ On August 31, 2004, NYSE submitted Amendment No. 2 to the proposed rule change.⁶ On November 29, 2004, NYSE submitted Amendment No. 3 to the proposed rule change.⁷ On December 17, 2004, NYSE withdrew Amendment No. 3. On December 17, 2004, NYSE submitted Amendment No. 4 to the proposed rule

change.⁸ On January 25, 2005, NYSE submitted Amendment No. 5 to the proposed rule change.⁹ On February 17, 2005, NYSE submitted Amendment No. 6 to the proposed rule change.¹⁰ On March 4, 2005, NYSE submitted Amendment No. 7 to the proposed rule change.¹¹ The proposed rule change, as amended, was re-published for comment in the **Federal Register** on March 25, 2005.¹² The Commission received one comment on the proposed rule change, as amended by Amendment Nos. 1, 2, 4, 5, 6, and 7.¹³ On May 27, 2005, NYSE submitted Amendment No. 8 to the proposed rule change.¹⁴ This order approves the proposed rule change, as amended by Amendment Nos. 1 through 7. Simultaneously, the Commission provides notice of filing of Amendment No. 8 and grants accelerated approval of Amendment No. 8.

II. Description

The Exchange seeks permanent approval of changes to certain of its minimum numerical standards for the original listing and continued listing of equity securities on NYSE originally approved by the Commission on January 29, 2004, on a pilot program basis (the "Pilot Program").¹⁵ Subsequently, to address concerns of a number of listed companies that did not comply with the Pilot Program's automatic application of new continued listing standards, the Exchange suspended the portions of the Pilot Program relating to the continued listing standards of Section 802.01B of

⁸ Amendment No. 4 replaced and superseded the original filing in its entirety.

⁹ Amendment No. 5 replaced and superseded the original filing in its entirety.

¹⁰ In Amendment No. 6, NYSE partially amended Sections 802.01B, 802.02, and 802.03 of the proposed rule text.

¹¹ In Amendment No. 7, NYSE partially amended Sections 802.03 of the proposed rule text.

¹² See Securities Exchange Act Release No. 51332 (March 8, 2005), 70 FR 15392.

¹³ See Letter to Jonathan G. Katz, Secretary, Commission, from Dorothy M. Donohue, Associate Counsel, Investment Company Institute, dated April 6, 2005 ("ICI Letter").

¹⁴ In Amendment No. 8, NYSE, in response to a comment letter, partially amended Section 802.01(B) of the proposed rule text to eliminate its proposed increase to the market capitalization continued listing requirement for closed-end funds, and to maintain the current market capitalization continued listing requirement for closed-end funds of \$15 million with an early notification threshold of \$25 million. In addition, the Exchange proposed to clarify that the proposed overall \$25 million average market capitalization over 30 consecutive trading days continued listing standard set out in second paragraph of Section 802.01B of the Listed Company Manual applies only to companies that are listed under Sections 102.01C or 103.01B.

¹⁵ See Securities Exchange Act Release No. 49154 (January 29, 2004), 69 FR 5633 (February 5, 2004) (approving File No. SR-NYSE-2003-43).

¹ 15 U.S.C. 78s(b)(1).

² 17 CFR 240.19b-4.

³ Amendment No. 1 replaced and superseded the original filing in its entirety.

⁴ See Securities Exchange Act Release No. 49917 (June 25, 2004), 69 FR 40439.

⁵ See letters to Jonathan G. Katz, Secretary, Commission, from Richard F. Latour, President and CEO, MicroFinancial Inc., dated July 15, 2004 ("MicroFinancial Letter"); Kenneth A. Hoogstra, von Briesen & Roper, s.c., dated July 20, 2004 ("von Briesen Letter"); and John L. Patenaude, Vice President Finance and Chief Financial Officer, Nashua Corporation, dated July 22, 2004 ("Nashua Letter").

⁶ Amendment No. 2 replaced and superseded the original filing in its entirety. In addition, NYSE also responded to the three comment letters in Amendment No. 2.

⁷ Amendment No. 3 replaced and superseded the original filing in its entirety.

¹⁴ 15 U.S.C. 78s(b)(2).

¹⁵ 15 U.S.C. 78o-3(b)(6).

¹⁶ 15 U.S.C. 78s(b)(2).

¹⁷ 17 CFR 200.30-3(a)(12).

the NYSE's Listed Company Manual.¹⁶ In this filing, File No. SR-NYSE-2004-20, the Exchange seeks permanent approval for the Pilot Program currently in effect with respect to the Exchange's original minimum listing standards and approval of the continued minimum listing standards as initially proposed in File No. SR-NYSE-2003-43 (but subsequently suspended) with modifications that are responsive to public comments submitted to the Commission.

Prior to the Pilot Program, Section 102.01C of the Listed Company Manual provided that a company must meet one of four specified financial standards in order to qualify to have its equity securities listed. The Exchange proposes permanent approval of amendments to three of these four standards that have been in effect under the Pilot Program.¹⁷ The Exchange also proposes permanent approval of amendments to Section 103.01B(III), which provides a corresponding numerical standard applicable to international companies and have also been in effect under the Pilot Program.

Prior to the Pilot Program, Section 102.01C(I) of the Listed Company Manual required that a company demonstrate pre-tax earnings of \$6.5 million in aggregate for the last three fiscal years, with either a minimum of: (a) \$2.5 million in earnings in the most recent fiscal year and \$2 million in each of the preceding two years; or (b) \$4.5 million in earnings in the most recent fiscal year, with positive earnings in each of the preceding two years. Pursuant to the Pilot Program, the "Earnings Test" requires that companies demonstrate pre-tax earnings of \$10 million in aggregate for the last three fiscal years. It also requires that the company demonstrate positive results in all three of the years tested with a minimum of \$2.0 million in earnings in each of the preceding two years. The Exchange believes that these changes strengthen the Earnings Test standard and also simplify it by eliminating the current two-tiered structure.

Prior to the Pilot Program, Section 102.01C(II) of the Listed Company Manual required that a company demonstrate market capitalization of at least \$500 million and revenues of at

least \$100 million over the most recent 12-month period. Provided that these thresholds were met, a company with operating cash flows of at least \$25 million in aggregate for the last three fiscal years and positive amounts in each of the three fiscal years would have qualified for listing. Section 102.01C(III) required that an issuer demonstrate (a) market capitalization of at least \$1 billion and (b) revenues of at least \$100 million in the most recent fiscal year. Because both of these tests are valuation and revenue-based, the Exchange now seeks permanent approval to consolidate them into one test with two alternative subsections. One of the sections of the current Pilot Program, the "Valuation/Revenue Test," incorporates the pre-Pilot Program requirements of Section 102.01C(II) as the "Valuation/Revenue with Cash Flow Test" with no change to the previous thresholds. The other section incorporates the pre-Pilot Program requirements of Section 102.01C(III) as the "Pure Valuation/Revenue Test." In addition, the Exchange proposes to permanently approve the Pilot Program amendments that will lower the thresholds of Section 102.01C(III) that require that companies demonstrate (a) market capitalization of at least \$750 million and (b) revenues of at least \$75 million during the most recent fiscal year. As noted above, the Exchange represents that its staff has monitored the modest number of companies over the last two years that have met the Pilot Program's lower thresholds to the "Pure Valuation/Revenue Test" and found that those companies performed to a standard that is appropriate for inclusion on the NYSE list.¹⁸

The Exchange is also proposing permanent approval of corresponding restructuring changes to Section 103.01B of the Listed Company Manual, which sets out minimum numerical standards for non-U.S. issuers. The Exchange is also proposing permanent approval of changes to the numeric thresholds of Section 103.01B(III) in accordance with changes to Section 102.01C(III).

In addition, the Exchange seeks permanent approval of its suspended Pilot Program that restructures and amends the numerical continued listing standards. Section 802.01B of the Listed Company Manual currently applies to companies that fall below any of the following criteria: (i) Average global market capitalization over a consecutive 30 trading-day period is less than \$50 million and total stockholders' equity is less than \$50 million; or (ii) average

global market capitalization over a consecutive 30 trading-day period is less than \$15 million; or (iii) for companies that qualified for original listing under the "global market capitalization" standard, (a) average global market capitalization over a consecutive 30 trading-day period is less than \$500 million and total revenues are less than \$20 million over the last 12 months (unless the resultant entity qualifies as an original listing under one of the other original listing standards), or (b) average global market capitalization over a consecutive 30 trading-day period is less than \$100 million.

The Exchange proposes to amend these thresholds and to specifically relate the continued listing standards of Section 802.01B of the Listed Company Manual to the original listing standards of Sections 102.01C or 103.01B used to qualify a company for listing. In addition, the Exchange proposes to add a minimum continued listing standard applicable to all companies regardless of the original listing standard under which it listed. This standard would require that all companies listed under Sections 102.01C or 103.01B maintain average global market capitalization over a consecutive 30 trading-day period of at least \$25 million or undergo the prompt initiation of suspension and delisting procedures by the Exchange (the "Minimum Continued Listing Standard").¹⁹

Companies that list under the Pilot Program Earnings Test or its predecessor test will be considered to be below compliance if average global market capitalization over a consecutive 30 trading-day period is less than \$75 million and, at the same time, total stockholders' equity is less than \$75 million. This level has been increased in the proposal to reflect marketplace expectations of those companies deemed suitable for continued listing. The current alternate threshold for the Earnings Test that resulted in a company being below compliance if average global market capitalization over a consecutive 30 trading-day period is less than \$15 million is proposed to be eliminated as a result of the proposed \$25 million Minimum Continued Listing Standard.

Issuers that list under the Pilot Program's "Valuation/Revenue with Cash Flow Test" or its predecessor test

¹⁶ See Securities Exchange Act Release Nos. 49443 (March 18, 2004), 69 FR 13929 (March 24, 2004) (File No. SR-NYSE-2004-15), and 51628 (April 28, 2005), 70 FR 23288 (May 4, 2005) (File No. SR-NYSE-2005-28).

¹⁷ The "Earnings Test," the "Valuation/Revenue Test" (incorporating in one section the pre-Pilot Program Valuation/Revenue with Cash Flow Test and in another section the Pure Valuation/Revenue Test), or the "Affiliated Company Test." See *supra* note 15 (approving File No. SR-NYSE-2003-43).

¹⁸ See Amendment No. 2, *supra* note 6.

¹⁹ Issuers that fall below this minimum threshold would not be afforded the opportunity to submit a plan and "cure" their noncompliance over a plan period. In addition, issuers that list under the Affiliated Company Test would be subject to the proposed \$25,000,000 threshold, regardless of the status of their parent company.

would be considered to be below compliance standards if: (a) average global market capitalization over a consecutive 30 trading-day period is less than \$250 million and, at the same time, total revenues are less than \$20 million over the last 12 months (unless the company qualifies as an original listing under one of the other original listing standards); or (b) average global market capitalization over a consecutive 30 trading-day period is less than \$75 million.²⁰

Issuers that list under the Pilot Program's "Pure Valuation/Revenue Test" or its predecessor test would be considered to be below compliance standards if: (a) average global market capitalization over a consecutive 30 trading-day period is less than \$375 million and, at the same time, total revenues are less than \$15 million over the last 12 months (unless the company qualifies as an original listing under one of the other original listing standards); or (b) average global market capitalization over a consecutive 30 trading-day period is less than \$100 million.

The Exchange also proposes to clarify that, in circumstances where a listed company's parent or affiliated company no longer controls the listed company or such listed company's parent or affiliated company falls below the continued listing standards applicable to the parent or affiliated company, the continued listing standards applicable to the Pilot Program's Earnings Test would apply to companies that originally listed under the Affiliated Company Standard. Amendments are also proposed to make clear that companies that list under the Affiliated Company Standard are subject to the Minimum Continued Listing Standard, regardless of the status of the listed company's parent. In addition, the Exchange proposes to increase the continued listing criteria for REITs and limited partnerships from \$15 million to \$25 million with a corresponding increase to the notification threshold from \$25 million to \$35 million.

Companies that fall below the foregoing minimum standards could be permitted a period of time to return to compliance, in accordance with the procedures specified in Sections 802.02 and 802.03 of the Listed Company Manual. As a general matter, companies must reestablish the level of market capitalization (and, if applicable, shareholder's equity) specified in the continued listing standard below which the company fell. However, with respect

to the current requirements of Section 802.01B(I) that a company reestablish both its market capitalization and its stockholders' equity to the \$50 million level, footnote (C) to Section 802.01B provides several alternatives. Currently, the footnote specifies that, to return to conformity, a company must do one of the following: (a) reestablish both its market capitalization and its stockholders' equity to the \$50 million level; (b) achieve average global market capitalization over a consecutive 30-trading-day period of at least \$100 million; or (c) achieve average global market capitalization over a consecutive 30 trading-day period of \$60 million, with either (x) stockholders' equity of at least \$40 million, or (y) an increase in stockholders' equity of at least \$40 million, since the company was notified by the Exchange that it was below continued listing standards. Likewise, with respect to the current requirements of Section 802.01B(iii) relating to companies that listed under the current global market capitalization standard, footnote (D) states that companies must reestablish both market capitalization and revenues in conformity with continued listing standards.

The Exchange proposes, however, to eliminate footnotes (C) and (D) to Section 802.01B of the Listed Company Manual, and, instead amend Sections 802.02 and 802.03 to provide that a listed company's plan to regain compliance need only demonstrate how the company will cease to trigger the applicable Section 802.01B continued listing standard at the end of the allowable recovery period. For example, a company that listed under the proposed Earnings Test would be required to submit a plan that demonstrates how the company will exceed either the \$75,000,000 market capitalization or shareholders' equity threshold, rather than be required to exceed both thresholds to regain compliance. It has been the Exchange's experience over the last five years that the sustained restoration of one component of the continued listing standard thresholds is evidence of a company's recovery. Due to the fact that a company would not be deemed below compliance unless it fell below both thresholds at the same time, the Exchange believes that the proposed amendment provides companies with a more rational basis for returning to compliance. This proposed change eliminates the potential for certain anomalies in situations where, for example, a company's stockholders' equity may never have been above the minimum and a decrease in market

capitalization below the required threshold triggers non-compliance. Since, in this example, it is the fact that market capitalization also dropped below the required threshold that results in a deficiency (despite no change to stockholders' equity), under amended Sections 802.02 and 802.03, the company in this situation would only be required to recover market capitalization in order to regain compliance.

The Exchange represents that it has considered how to transition the above-described changes to the continued listing standards and intends to provide a period of 30 trading days from the date of any Commission approval of the proposed amendments until such amendments would become effective.

Sections 802.02 and 802.03 of the Listed Company Manual provide that, with respect to a company that is determined to be below continued listing standards a second time within 12 months of successful recovery from previous non-compliance, the Exchange will examine the relationship between the two incidents of falling below continued listing standards and re-evaluate the company's method of financial recovery from the first incident. The Exchange may then take appropriate action, which, depending upon the circumstances, may include truncating the normal procedures for reestablishing conformity with the continued listing standards or immediately initiating suspension and delisting procedures. For those companies that are within such a 12-month period and that would be deemed to be below continued listing standards as a direct result of the approval of the amendments proposed in this filing, the Exchange would not intend to truncate or immediately initiate suspension and delisting solely on the basis of the proposed increase to the current continued listing standards. The Exchange would take into consideration all of the facts and circumstances relating to the company in determining whether to allow such company an opportunity to submit a second plan.

With respect to an issuer currently below the continued listing standards now in force, the Exchange intends to allow it to complete its applicable follow-up procedures and plan for return to compliance as provided in Sections 802.02 and 802.03 of the Listed Company Manual. If, at the end thereof, the issuer is compliant with the continued listing standards about which it was originally notified, but below the increased requirements set forth above, the Exchange would grant it an

²⁰ These levels are lower than the existing "global market capitalization" standard.

opportunity to present an additional business plan advising the Exchange of definitive action the issuer has taken, or is taking, that would bring it into conformity with the increased requirements within a further 12 months. In addition, if an issuer was to complete its currently applicable follow-up procedures and plan and was not compliant at that time with the continued listing standards about which it was originally notified, but is above the increased requirements set forth above, the Exchange would consider that issuer to be in conformity with the continued listing standards.

According to NYSE, for an issuer that is in compliance with the continued listing standards now in force but that might be below the continued listing standards proposed herein, the proposed 30 trading-day measurement period prior to effectiveness would allow the Exchange sufficient time to provide early warnings to any issuer that would potentially be below compliance at the end of that period. If, at the end of the 30 trading-day measurement period, an issuer is below the increased requirements set forth above, the Exchange would formally notify the issuer of such non-compliance and provide it with an opportunity to present a business plan within 45 days of that notification advising the Exchange of definitive action the issuer would take to bring it into conformity with the increased requirements within an 18-month period.

Finally, the Exchange proposes minor technical and conforming changes to Sections 102.02C, 103.01B, 802.01A, 802.01B, and 802.01C of the Listed Company Manual.

III. Summary of Comments

The Commission received three comment letters generally opposing the proposed rule change, as amended by Amendment No. 1 and published for comment in the **Federal Register** on July 2, 2004.²¹ The commenters opposed the proposed increase to \$75 million from \$50 million to the Earnings Test continued listing standard thresholds for market capitalization and stockholders' equity million. Commenters believed that NYSE failed to provide a sufficient rationale for the proposal supported by data and market conditions.²² One commenter noted that the proposed changes would affect only a small percentage of NYSE's listed

companies.²³ The commenters argued that the proposed changes to the Earnings Test would be disruptive and particularly burdensome for the affected companies, leading to uncertainty among both affected issuers and their investors concerning the listing.²⁴ The commenters argued that the proposal would push affected companies to sacrifice long-term plans in favor of short-term growth,²⁵ or that smaller companies, currently in compliance, would be required to find alternatives in a short period of time.²⁶ One commenter noted that a company currently below existing continued listing standards may, in some instances, be treated more favorably than those currently in compliance.²⁷ All three commenters argued for either a grace period or grandfather provision for affected companies,²⁸ and one commenter requested that the effective date of the proposal be clarified.²⁹

In response to these comments, NYSE noted in Amendment No. 2 that it undertook a further review of the listed companies that are currently either below the proposed continued financial listing standard thresholds or within 10% of those thresholds and found that there were only 21 such companies representing 0.08% of all NYSE-listed companies. According to NYSE, these companies qualified under the original Earnings Test or the original Closed-end Fund, REIT, or Limited Partnership Test. NYSE represented that only ten of the 21 companies would have been below compliance under the proposed thresholds. NYSE represented that, of those ten, two companies were below compliance under the existing thresholds and one additional REIT was operating under a liquidation process expected to be completed in August 2004. NYSE noted that it believed that the proposed increases to the current continued listing standards were appropriate. As a result of these comments, NYSE filed Amendment No. 2 and proposed to amend Sections 802.02 and 802.03 of the Listed Company Manual to modify the thresholds that companies must exceed

in order to regain compliance with the continued listing standards.³⁰

The Commission received one comment letter from ICI partially opposing the proposed rule change, as amended by Amendment Nos. 1, 2, 4, 5, 6, and 7 and published for comment in the **Federal Register** on March 25, 2005.³¹ ICI opposed the part of the proposal dealing with continued listing standards for closed-end funds.³² Specifically, ICI objected to the proposed change that would subject closed-end funds that fall below an average market capitalization of \$25 million over 30 consecutive trading days to immediate suspension and delisting instead of the \$15 million requirement that is currently in effect. ISI stressed that the proposal does not take into account that NYSE maintains distinct initial listing standards for closed-end funds in a fund family verses stand-alone closed-end funds (noting that that funds in a fund family must have a public market value of \$30 million versus stand-alone funds that must have a public market value of \$60 million).³³ As a result, ISI believes that treating all closed-end funds, stand-alone funds and those listed as part of a fund family, the same by implementing a uniform \$25 million market capitalization requirement with respect to the Exchange's continued listing standards is inappropriate.³⁴ ISI instead recommended that NYSE maintain its current \$15 million continued listing standard for closed-end funds that list as part of a fund family. ISI believes that its approach would make the NYSE's continued listing standard for closed-end funds more consistent with the continued listing standards for other issuers and

³⁰ Specifically and as described in greater detail above, the Exchange proposed to eliminate footnotes (C) and (D) to Section 802.01B of the Listed Company Manual, and, instead proposed to amend Sections 802.02 and 802.03 to provide that a listed company's plan to regain compliance need only demonstrate how the company will cease to trigger the applicable Section 802.01B continued listing standard at the end of the allowable recovery period. Amendment No. 2 also proposed to provide the Exchange with flexibility to extend a company's Plan period by an additional 12 months in certain circumstances. This aspect of the proposal was later removed.

³¹ See Securities Exchange Act Release No. 51332 (March 8, 2005), 70 FR 15392.

³² See ICI Letter, *supra* note 13.

³³ See ICI Letter, *supra* note 13, at 1–2. ISI asserts that NYSE initially created this distinction to accommodate the wishes of fund families that generally prefer to list all of their funds on the same market.

³⁴ See ICI Letter, *supra* note 13, at 2. ISI notes that stand-alone funds would be subject to delisting if they there is more than a 58 percent decline in market capitalization versus closed-end funds that would be subject to delisting if there is more than a 16 percent decrease.

²¹ 21 See Securities Exchange Act Release No. 49917 (June 25, 2004), 69 FR 40439.

²² See MicroFinancial Letter, *supra* note 5, at 3, and von Briesen Letter, *supra* note 5, at 2.

²³ See MicroFinancial Letter, *supra* note 5, at 2.

²⁴ See Nashua Letter, *supra* note 5, at 1; MicroFinancial Letter, *supra* note 5, at 2; and von Briesen Letter, *supra* note 5, at 2.

²⁵ See von Briesen Letter, *supra* note 5, at 2.

²⁶ See Nashua Letter, *supra* note 5, at 1.

²⁷ See von Briesen Letter, *supra* note 5, at 3.

²⁸ See MicroFinancial Letter, *supra* note 5, at 3–4; Nashua Letter, *supra* note 5, at 2; and von Briesen Letter, *supra* note 5, at 3–4.

²⁹ See von Briesen Letter, *supra* note 5, at 3.

also make it easier for fund families to list all of their funds on one exchange.³⁵

In response to ISI's comment, NYSE acknowledged in Amendment No. 8 that closed-end funds listing in a fund family are subject to distinct alternative listing criteria that permit the listing of all of the funds in a family, if, among other things, no one fund has a market value of publicly held shares of less than \$30 million (rather than the \$60 million required for the listing of individual closed-end funds). NYSE also acknowledged that a fund that lists under the fund family initial listing standard with a market value of publicly held shares of \$30 million would be subject to immediate early warning for delisting based on the originally proposed \$35 million early notification threshold. In order to avoid this peculiar result, NYSE modified its proposal in Amendment No. 8 to maintain the existing market capitalization continued listing criteria for closed-end funds at its current level of \$15 million with an early notification threshold of \$25 million.

IV. Discussion and Commission Findings

After careful review of the proposal and consideration of the comment letters, the Commission finds that the proposed rule change, as amended, is consistent with the requirements of the Act and the rules and regulations thereunder applicable to a national securities exchange.³⁶ In particular, the Commission finds that the proposed rule change is consistent with Section 6(b)(5) of the Act,³⁷ which requires that the rules of an exchange be designed to promote just and equitable principles of trade, remove impediments to and perfect the mechanism of a free and open market and a national securities system, and protect investors and the public interest.

The proposed changes to Section 102.01C(I) of the Listed Company Manual amending the Earnings Test would require that companies demonstrate pre-tax earnings of \$10 million in aggregate for the last three fiscal years. The proposed Earnings Test would also require that the company demonstrate positive results in all three of the years tested with a minimum of \$2 million in earnings in each of the preceding two years. The Commission believes that these amendments are consistent with the Act.

The amendments to the current thresholds of Section 102.01C(III) of the Listed Company Manual would require, in order to qualify for listing under the "Pure Valuation/Revenue Test," that companies demonstrate (a) market capitalization of at least \$750 million; and (b) revenues of at least \$75 million during the most recent fiscal year. The Commission believes that it is appropriate for the Exchange, based upon its experience, to determine that the companies that meet this proposed standard would be appropriate for inclusion on the NYSE list.

In addition, the Commission believes that the amendments to the numerical continued listing standards in Section 802.01B of the Listed Company Manual should simplify and clarify the continued listing standards, by relating the continued listing standards to the original listing standards set forth in Sections 102.01C and 103.01B. The Commission believes that it is consistent with the Act for the Exchange, based upon its experience, to determine that the proposed categories of listing standards reflect marketplace expectations of those companies deemed suitable for continued listing. The Commission also believes that it is consistent with the Act for the Exchange to allow a company to regain compliance by ceasing to trigger the applicable continued listing standard it violated by the end of the recovery period. In addition, the Commission notes that, in general, the continued listing standards reflect the proportional adjustments in the initial listing standards.

Three commenters, in responding to the proposed rule change as amended by Amendment No. 1, opposed the proposed increase to \$75 million from \$50 million to the Earnings Test continued listing standard thresholds for market capitalization and stockholders' equity million. These commenters believed that NYSE failed to provide a sufficient rationale for the proposal supported by data and market conditions.³⁸

After carefully considering these comment letters, the Commission, however, believes that the proposed continued listing standards are reasonable and consistent with the Act. The Commission believes that the commenter's concerns are addressed by Amendment No. 2, in which NYSE proposed to amend Sections 802.02 and 802.03 of the Listed Company Manual to modify the thresholds that companies must exceed in order to regain

compliance with the continued listing standards.³⁹ NYSE also noted that it undertook a further review of the listed companies that are currently either below the proposed continued financial listing standard thresholds or within 10% of those thresholds and found that there were only 21 such companies representing 0.08% of all NYSE-listed companies. NYSE represented that only ten of the 21 companies would have been below compliance under the proposed thresholds. NYSE represented that, of those ten, two companies were below compliance under the existing thresholds and one additional REIT was operating under a liquidation process expected to be completed in August 2004.

The commenters also argued for either a grace period or grandfather provision for affected companies,⁴⁰ and one commenter requested that the effective date of the proposal be clarified.⁴¹ The commenters argued that the proposed changes to the Earnings Test would be disruptive and particularly burdensome for the affected companies, leading to uncertainty among both affected issuers and their investors concerning the listing.⁴²

The Commission finds that the Exchange has provided an implementation schedule for the amended continued listing standards that includes a sufficient transition period for affected companies. Specifically, the Exchange will provide a period of 30 trading-days from the date of Commission approval of the proposed amendments until such amendments will become effective. In addition, for those companies that are currently within a 12-month period following their recovery from previous non-compliance (pursuant to a Plan) and would fall below continued listing standards as a direct result of the approval of the proposal, the Exchange does not intend to truncate the normal

³⁹ Specifically and as described in greater detail above, the Exchange proposed to eliminate footnotes (C) and (D) to Section 802.01B of the Listed Company Manual, and, instead proposed to amend Sections 802.02 and 802.03 to provide that a listed company's plan to regain compliance need only demonstrate how the company will cease to trigger the applicable Section 802.01B continued listing standard at the end of the allowable recovery period. Amendment No. 2 also proposed to provide the Exchange with flexibility to extend a company's Plan period by an additional 12 months in certain circumstances. This aspect of the proposal was later removed.

⁴⁰ See MicroFinancial Letter, *supra* note 5, at 3–4; Nashua Letter, *supra* note 5, at 2; and von Briesen Letter, *supra* note 5, at 3–4.

⁴¹ See von Briesen Letter, *supra* note 5, at 3.

⁴² See Nashua Letter, *supra* note 5, at 1; MicroFinancial Letter, *supra* note 5, at 2; and von Briesen Letter, *supra* note 5, at 2.

³⁵ See ICI Letter, *supra* note 13, at 2.

³⁶ In approving this proposal, the Commission has considered its impact on efficiency, competition, and capital formation. 15 U.S.C. 78c(f).

³⁷ 15 U.S.C. 78f(b)(5).

³⁸ See MicroFinancial Letter, *supra* note 5, at 3, and von Briesen Letter, *supra* note 5, at 2.

procedures or immediately initiate suspension and delisting procedures, solely on the basis of the proposed increase to the current continued listing standards. The Exchange intends to take into consideration all of the facts and circumstances relating to the company, including the relationship between the two incidents of falling below the continued listing standards and the method of recovery from the first incident, in determining whether to allow such a company to submit a second Plan.

The Exchange intends to allow companies that are currently below the continued listing standards to complete their applicable follow-up procedures and Plan for return to compliance, as provided in Sections 802.02 and 802.03 of the Listed Company Manual. If, at the end thereof, such companies are compliant with the continued listing standards for which they were originally notified, but below the increased requirements proposed herein, the Exchange would grant them an opportunity to present an additional business plan advising the Exchange of definitive action the company has taken, or is taking, that would bring the company into conformity with the increased requirements within a further 12 months. In addition, if a company completes its currently applicable follow-up procedures and Plan and is not compliant at that time with the continued listing standards for which it was originally notified, but is above the increased requirements set forth above, the Exchange would consider that company to be in conformity with the continued listing standards.

The Commission believes that the Exchange's transition policies are clearly delineated and consistent with the Act. The Commission notes that the notice and comment periods provided for this filing and the additional period of 30 trading-days from the date of Commission approval of the proposed amendments until such amendments would become effective should provide sufficient notice to issuers that may be below compliance with the proposed continued listing standards. The Commission, however, expects that the Exchange will follow closely the progress of companies that are currently in their Plan period or subsequent 12-month period, to ensure that these companies will satisfy the new continued listing standards. The Commission notes that, pursuant to Section 802.02 of the Listed Company Manual, the Exchange has the discretion to suspend trading in any security and apply to the Commission for delisting,

when the Exchange deems it necessary for the protection of investors.

In addition, the Commission received one comment letter from ICI in response to the proposed rule change, as amended by Amendment Nos. 1 through 7. ICI objected to the proposed change that would subject closed-end funds that fall below an average market capitalization of \$25 million over 30 consecutive trading days to immediate suspension and delisting instead of the \$15 million requirement that is currently in effect. The Commission believes that the ISI's concerns are answered by Amendment No. 8, which maintains the existing market capitalization continued listing criteria for closed-end funds at its current level of \$15 million with an early notification threshold of \$25 million.

The Commission finds good cause for approving proposed Amendment No. 8 before the thirtieth day after the date of publication of notice of filing thereof in the **Federal Register**. NYSE filed Amendment No. 8 in response to a comment it received after the publication of notice of filing of the proposed rule change to address the commenter's concerns.⁴³ Because Amendment No. 8 proposes simply to maintain the current market capitalization continued listing requirement in effect for closed-end funds,⁴⁴ the Commission finds good cause for accelerating approval of the proposed rule change, as amended by Amendment No. 8.

V. Solicitation of Comments

Interested persons are invited to submit written data, views, and arguments concerning the Amendment No. 8, including whether the proposed rule change, as amended by Amendment No. 8, is consistent with the Act. Comments may be submitted by any of the following methods:

Electronic Comments

Use the Commission's Internet comment form (<http://www.sec.gov/rules/sro.shtml>); or

- Send an e-mail to rule-comments@sec.gov. Please include File Number SR-NYSE-2004-20 on the subject line.

Paper Comments

- Send paper comments in triplicate to Jonathan G. Katz, Secretary, Securities and Exchange Commission, Station Place, 100 F Street, NE., Washington, DC 20549-9303. All submissions should refer to File

Number SR-NYSE-2004-20. This file number should be included on the subject line if e-mail is used. To help the Commission process and review your comments more efficiently, please use only one method. The Commission will post all comments on the Commission's Internet Web site (<http://www.sec.gov/rules/sro.shtml>). Copies of the submission, all subsequent amendments, all written statements with respect to the proposed rule change that are filed with the Commission, and all written communications relating to the proposed rule change between the Commission and any person, other than those that may be withheld from the public in accordance with the provisions of 5 U.S.C. 552, will be available for inspection and copying in the Commission's Public Reference Section, Washington, DC 20549-9303. Copies of such filing also will be available for inspection and copying at the principal office of NYSE. All comments received will be posted without change; the Commission does not edit personal identifying information from submissions. You should submit only information that you wish to make available publicly. All submissions should refer to File Number SR-NYSE-2004-20 and should be submitted on or before July 11, 2005.

VI. Conclusion

It is therefore ordered, pursuant to Section 19(b)(2) of the Act,⁴⁵ that the proposed rule change (SR-NYSE-2004-20), as amended by Amendment Nos. 1, 2, 4, 5, 6, and 7, is hereby approved, and that Amendment No. 8 to the proposed rule change be, and hereby is, approved on an accelerated basis.

For the Commission, by the Division of Market Regulation, pursuant to delegated authority.⁴⁶

Margaret H. McFarland,

Deputy Secretary.

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⁴³ See Summary of Comments, *supra* Section III.

⁴⁴ See note 14, *supra*.

⁴⁵ 15 U.S.C. 78s(b)(2).

⁴⁶ 17 CFR 200.30-3(a)(12).

SECURITIES AND EXCHANGE COMMISSION

[Release No. 34-51838; File No. SR-Phlx-2005-30]

Self-Regulatory Organizations; Philadelphia Stock Exchange, Inc.; Notice of Filing and Immediate Effectiveness of Proposed Rule Change and Amendment Nos. 1 and 2 Thereto To Impose a New Licensing Fee in Connection With the Firm-Related Equity Option and Index Option Fee Cap

June 14, 2005.

Pursuant to Section 19(b)(1) of the Securities Exchange Act of 1934 ("Act")¹ and Rule 19b-4 thereunder,² notice is hereby given that on April 28, 2005, the Philadelphia Stock Exchange, Inc. ("Phlx" or "Exchange") filed with the Securities and Exchange Commission ("Commission") the proposed rule change as described in Items I, II, and III below, which Items have been prepared by the Exchange. On April 29, 2005, the Exchange filed Amendment No. 1 to the proposed rule change.³ On June 6, 2005, the Exchange filed Amendment No. 2 to the proposed rule change.⁴ Phlx has designated this proposal as one establishing or changing a due, fee, or other charge imposed by a self-regulatory organization pursuant to Section 19(b)(3)(A) of the Act,⁵ and Rule 19b-4(f)(2) thereunder,⁶ which renders the proposal effective upon filing with the Commission. The Commission is publishing this notice to solicit comments on the proposed rule change, as amended, from interested persons.

I. Self-Regulatory Organization's Statement of the Terms of Substance of the Proposed Rule Change

The Phlx proposes to amend its schedule of fees to adopt a license fee of \$0.10 for options traded on the following products: (1) iShares Lehman 1-3 Year Treasury Bond Fund, traded under the symbol SHY ("SHY"); (2) iShares Lehman 7-10 Year Treasury Bond Fund, traded under the symbol IEF ("IEF"); (3) iShares Lehman 20+ Treasury Bond Fund, traded under the symbol TLT ("TLT"); (4) iShares Lehman Aggregate Bond Fund, traded

under the symbol AGG ("AGG"); (5) iShares Lehman TIPS Bond Fund, traded under the symbol TIP ("TIP") (collectively "iShares Lehman products"); (6) KBW Capital Markets Index, traded under the symbol KSX ("KSX");⁷ (7) KBW Insurance Index, traded under the symbol KIX ("KIX"); and (8) Phlx/KBW Bank Index, traded under the symbol ("BKX") (collectively "KBW products") to be assessed per contract side for equity option and index option "firm" transactions (comprised of equity option firm/proprietary comparison transactions, equity option firm/proprietary transactions, equity option firm/proprietary facilitation transactions, index option firm/proprietary comparison transactions, index option firm/proprietary transactions and index option firm/proprietary facilitation transactions). This license fee will be imposed only after the Exchange's \$60,000 "firm-related" equity option and index option comparison and transaction charge cap, described more fully below, is reached.

Currently, the Exchange imposes a cap of \$60,000 per member organization⁸ on all "firm-related" equity option and index option comparison and transaction charges combined.⁹ Specifically, "firm-related" charges include equity option firm/proprietary comparison charges, equity option firm/proprietary transaction charges, equity option firm/proprietary facilitation transaction charges, index option firm/proprietary comparison charges, index option firm/proprietary transaction charges, and index option firm/proprietary facilitation transaction charges (collectively "firm-related charges"). Thus, such firm-related

charges in the aggregate for one billing month may not exceed \$60,000 per month per member organization.

The Exchange also imposes a license fee of \$0.10 per contract side for equity option "firm" transactions on options on Nasdaq-100 Index Tracking StockSM¹⁰ traded under the symbol QQQQ ("QQQ") and certain other licensed products (collectively "licensed products")¹¹ after the \$60,000 cap, as described above, is reached. Therefore, when a member organization exceeds the \$60,000 cap (comprised of combined firm-related charges), the member organization is charged \$60,000, plus license fees of \$0.10 per contract side for any contracts in licensed products (if any) over those that were included in reaching the \$60,000 cap. In other words, if the cap is reached, the \$0.10 license fee is imposed on all subsequent equity option and index option firm transactions; these license fees are charged in addition to the \$60,000 cap.

The Exchange proposes to adopt a \$0.10 license fee per contract side for the iShares Lehman products and the KBW products for equity option and index option firm transactions, which will be imposed after the \$60,000 cap is reached in the same way as the current licensed product fees are assessed. Thus, when a member organization exceeds the \$60,000 cap, the member organization will be charged \$60,000 plus any applicable license fees for trades of licensed products, including the iShares Lehman products and KBW products, over those trades that were counted in reaching the \$60,000 cap.¹²

¹⁰ The Nasdaq-100®, Nasdaq-100 Index®, Nasdaq®, The Nasdaq Stock Market®, Nasdaq-100 SharesSM, Nasdaq-100 TrustSM, Nasdaq-100 Index Tracking StockSM, and QQQSM are trademarks or service marks of The Nasdaq Stock Market, Inc. ("Nasdaq") and have been licensed for use for certain purposes by the Phlx pursuant to a License Agreement with Nasdaq. The Nasdaq-100 Index® (the "Index") is determined, composed, and calculated by Nasdaq without regard to the Licensee, the Nasdaq-100 TrustSM, or the beneficial owners of Nasdaq-100 SharesSM. Nasdaq has complete control and sole discretion in determining, comprising, or calculating the Index or in modifying in any way its method for determining, comprising, or calculating the Index in the future.

¹¹ In addition to the QQQs, the following products are assessed a \$0.10 license fee per contract side after the \$60,000 cap is reached: Russell 1000 Growth iShares ("IWF"); Russell 2000 iShares ("IWM"); Russell 2000 Value iShares ("IWN"); Russell 2000 Growth iShares ("IWO"); Russell Midcap Growth iShares ("IWP"); Russell Midcap Value iShares ("IWS"); NYSE Composite Index ("NYC"); NYSE U.S. 100 Index ("NY"); and Standard & Poor's Depositary Receipts®, Trust Series 1 ("SPY").

¹² Consistent with current practice, when calculating the \$60,000 cap, the Exchange first calculates all equity option and index option transaction and comparison charges for products

¹ 15 U.S.C. 78s(b)(1).

² 17 CFR 240.19b-4.

³ In Amendment No. 1, the Exchange made non-substantive changes to the text of the proposed rule change.

⁴ In Amendment No. 2, the Exchange modified the text of the proposed rule change and clarified the basis of the proposal.

⁵ 15 U.S.C. 78s(b)(3)(A).

⁶ 17 CFR 240.19b-4(f)(2).

⁷ "KBW," "Keefe, Bruyette & Woods Capital Markets Index," and "KBW Capital Markets Index" are trademarks of Keefe, Bruyette & Woods, Inc. and have been licensed for use by the Philadelphia Stock Exchange, Inc. Keefe, Bruyette & Woods, Inc. makes no recommendations concerning the advisability of investing in options based on the KBW Capital Markets Index.

⁸ The firm/proprietary comparison or transaction charge applies to member organizations for orders for the proprietary account of any member or non-member broker-dealer that derives more than 35% of its annual, gross revenues from commissions and principal transactions with customers. Member organizations are required to verify this amount to the Exchange by certifying that they have reached this threshold by submitting a copy of their annual report, which was prepared in accordance with Generally Accepted Accounting Principles ("GAAP"). In the event that a member organization has not been in business for one year, the most recent quarterly reports, prepared in accordance with GAAP, are accepted. See Securities Exchange Act Release No. 43558 (November 14, 2000), 65 FR 69984 (November 21, 2000) (SR-Phlx-2000-85).

⁹ See Securities Exchange Act Release No. 51024 (January 11, 2005), 70 FR 3088 (January 19, 2005) (SR-Phlx-2004-94).

The fees set forth in this proposal are scheduled to become effective for transactions settling on or after May 1, 2005.

The text of the proposed rule change is available on the Phlx's Web site, <http://www.phlx.com>, at the Phlx's Office of the Secretary, and at the Commission's Public Reference Section.

II. Self-Regulatory Organization's Statement of the Purpose of, and Statutory Basis for, the Proposed Rule Change

In its filing with the Commission, the Phlx included statements concerning the purpose of and basis for the proposed rule change and discussed any comments it received on the proposal. The text of these statements may be examined at the places specified in Item IV below. The Exchange has prepared summaries, set forth in sections A, B, and C below, of the most significant aspects of such statements.

A. Self-Regulatory Organization's Statement of the Purpose of, and the Statutory Basis for, the Proposed Rule Change

1. Purpose

The purpose of assessing the iShares Lehman products and the KBW products license fee of \$0.10 per contract side after reaching the \$60,000 cap as described in this proposal is to help defray licensing costs associated with the trading of these products, while still capping member organizations' fees enough to attract volume from other exchanges. The cap operates this way in order to offer an incentive for additional volume without leaving the Exchange with significant out-of-pocket costs.

2. Statutory Basis

The Exchange believes that the proposed rule change is consistent with Section 6(b) of the Act¹³ in general, and furthers the objectives of Section 6(b)(4) of the Act¹⁴ in particular, in that it is an equitable allocation of reasonable dues, fees, and other charges among Exchange members.

B. Self-Regulatory Organization's Statement on Burden on Competition

The Phlx believes that the proposed rule change would impose no burden on

competition that is not necessary or appropriate in furtherance of the purposes of the Act.

C. Self-Regulatory Organization's Statement on Comments on the Proposed Rule Change Received From Members, Participants or Others

The Exchange did not solicit or receive any written comments with respect to the proposal.

III. Date of Effectiveness of the Proposed Rule Change and Timing for Commission Action

The foregoing proposed rule change has been designated as a fee change pursuant to Section 19(b)(3)(A)(ii) of the Act¹⁵ and Rule 19b-4(f)(2)¹⁶ thereunder. Accordingly, the proposal is effective upon filing with the Commission. At any time within 60 days of the filing of the proposed rule change, the Commission may summarily abrogate such rule change if it appears to the Commission that such action is necessary or appropriate in the public interest, for the protection of investors, or otherwise in furtherance of the purposes of the Act.¹⁷

IV. Solicitation of Comments

Interested persons are invited to submit written data, views, and arguments concerning the foregoing, including whether the proposed rule change, as amended, is consistent with the Act. Comments may be submitted by any of the following methods:

Electronic Comments

- Use the Commission's Internet comment form (<http://www.sec.gov/rules/sro.shtml>); or
- Send an e-mail to rule-comments@sec.gov. Please include File Number SR-Phlx-2005-30 on the subject line.

Paper Comments

- Send paper comments in triplicate to Jonathan G. Katz, Secretary, Securities and Exchange Commission, Station Place, 100 F Street NE., Washington, DC 20549-9303.

All submissions should refer to File Number SR-Phlx-2005-30. This file number should be included on the subject line if e-mail is used. To help the Commission process and review your

comments more efficiently, please use only one method. The Commission will post all comments on the Commission's Internet Web site (<http://www.sec.gov/rules/sro.shtml>). Copies of the submission, all subsequent amendments, all written statements with respect to the proposed rule change that are filed with the Commission, and all written communications relating to the proposed rule change between the Commission and any person, other than those that may be withheld from the public in accordance with the provisions of 5 U.S.C. 552, will be available for inspection and copying in the Commission's Public Reference Section. Copies of such filing also will be available for inspection and copying at the principal office of the Exchange. All comments received will be posted without change; the Commission does not edit personal identifying information from submissions. You should submit only information that you wish to make available publicly. All submissions should refer to File Number SR-Phlx-2005-30 and should be submitted on or before July 11, 2005.

For the Commission, by the Division of Market Regulation, pursuant to delegated authority.¹⁸

Margaret H. McFarland,
Deputy Secretary.

[FR Doc. E5-3155 Filed 6-17-05; 8:45 am]

BILLING CODE 8010-01-P

SECURITIES AND EXCHANGE COMMISSION

[Release No. 34-51827; File No. SR-Phlx-2005-20]

Self-Regulatory Organizations; Philadelphia Stock Exchange, Inc.; Order Granting Approval to Proposed Rule Change, and Amendment No. 1 Thereto, Relating to the Elimination of the Prohibition Against the Entry of Multiple Orders in an Option Within Any 15-Second Period for an Account or Accounts of the Same Beneficial Owner

June 13, 2005.

On March 24, 2005, the Philadelphia Stock Exchange, Inc. ("Phlx" or "Exchange") filed with the Securities and Exchange Commission ("Commission"), pursuant to Section 19(b)(1) of the Securities Exchange Act of 1934 ("Act"),¹ and Rule 19b-4 thereunder,² a proposed rule change to

without license fees and then equity option and index option transaction and comparison charges for products with license fees (*i.e.*, QQQ license fees) that are assessed by the Exchange after the \$60,000 cap is reached. See Securities Exchange Act Release No. 50836 (December 10, 2004), 69 FR 75584 (December 17, 2004) (SR-Phlx-2004-70).

¹³ 15 U.S.C. 78f(b).

¹⁴ 15 U.S.C. 78f(b)(4).

¹⁵ 15 U.S.C. 78s(b)(3)(A)(ii).

¹⁶ 17 CFR 240.19b-4(f)(2).

¹⁷ See 15 U.S.C. 78s(b)(3)(C). For purposes of calculating the 60-day abrogation period, the Commission considers the period to commence on June 6, 2005, the date the Phlx filed Amendment No. 2. The effective date of the original proposed rule change is April 28, 2005, the effective date of Amendment No. 1 is April 29, 2005, and the effective date of Amendment No. 2 is June 6, 2005.

¹⁸ 17 CFR 200.30-3(a)(12).

¹ 15 U.S.C. 78s(b)(1).

² 17 CFR 240.19b-4.

amend Exchange Rule 1080, Philadelphia Stock Exchange Automated Options Market ("AUTOM") System,³ to eliminate the restriction against Order Entry Firms⁴ entering or permitting the entry of multiple orders in an option within any 15-second period for an account or accounts of the same beneficial owner and to eliminate a similar provision in Commentary .05 to Exchange Rule 1080 relating to proprietary orders submitted by off-floor broker-dealers.⁵

On April 11, 2005, the Exchange filed Amendment No. 1 to the proposed rule change.⁶ The proposed rule change, as amended, was published for comment in the **Federal Register** on May 6, 2005.⁷ The Commission received no comments on the proposal.

The Commission finds that the proposed rule change, as amended, is consistent with the requirements of the Act and the rules and regulations thereunder applicable to a national securities exchange⁸ and, in particular, the requirements of Section 6(b) of the Act⁹ and the rules and regulations thereunder. The Commission finds specifically that the proposed rule change, as amended, is consistent with Section 6(b)(5) of the Act,¹⁰ in that it is designed to promote just and equitable principles of trade, remove impediments to and perfect the mechanism of a free and open market

and a national market system, and, in general, to protect investors and the public interest. In the Commission's view, removal of the limitation on the entry into AUTOM of multiple orders by an Order Entry Firm for the same beneficial account owner within any 15-second period should help facilitate more efficient and immediate executions on the Exchange.

It is therefore ordered, pursuant to Section 19(b)(2) of the Act,¹¹ that the proposed rule change (SR-Phlx-2005-20), as amended, be, and hereby is, approved.

For the Commission, by the Division of Market Regulation, pursuant to delegated authority.¹²

Margaret H. McFarland,

Deputy Secretary.

[FR Doc. E5-3157 Filed 6-17-05; 8:45 am]

BILLING CODE 8010-01-P

DEPARTMENT OF STATE

[Public Notice 5114]

Bureau of Political-Military Affairs; Notice of Information Collection Under Emergency Review: Form DS-4076; Request for Commodity Jurisdiction (CJ)/U.S. Munitions List (USML) Determination; OMB Control Number 1405-XXXX

AGENCY: Department of State.

ACTION: Notice.

SUMMARY: The Department of State has submitted the following information collection request to the Office of Management and Budget (OMB) for review and approval in accordance with the emergency review procedures of the Paperwork Reduction Act of 1995.

- *Type of Request:* Emergency Review.
- *Originating Office:* Bureau of Political-Military Affairs, Directorate of Defense Trade Controls, (PM/DDTC).
- *Title of Information Collection:* Request for Commodity Jurisdiction (CJ)/U.S. Munitions List (USML) Determination.

- *OMB Control Number:* None.
- *Frequency:* Once per year per respondent.
- *Form Number:* DS-4076.
- *Respondents:* Business organizations.
- *Estimated Number of Respondents:* 300.
- *Estimated Number of Responses:* 300.
- *Average Hours Per Response:* 2 hours.

¹¹ 15 U.S.C. 78s(b)(2).

¹² 17 CFR 200.30-3(a)(12).

- *Total Estimated Burden:* 600 hours.
- *Obligation to Respond:* Voluntary.

The proposed information collection is published to obtain comments from the public and affected agencies. Emergency review and approval of this collection has been requested from OMB by July 29, 2005. If granted, the emergency approval is only valid for 180 days. Comments should be directed to the State Department Desk Officer, Office of Information and Regulatory Affairs, Office of Management and Budget (OMB), Washington, DC 20530, who may be reached on 202-395-7316.

You may submit comments by any of the following methods:

- E-mail: *Katherine.T.Astrich@omb.eop.gov*. You must include the form number (DS-4076) and information collection title in the subject line of your message.
- Hand Delivery or Courier: OIRA State Department Desk Officer, Office of Management and Budget, 725 17th Street, NW., Washington, DC 20503.
- Fax: 202-395-6974.

SUPPLEMENTARY INFORMATION: During the first 60 days of this same period a regular review of this information collection is also being undertaken. Comments are encouraged and will be accepted until 60 days from the date that this notice is published in the **Federal Register**. The agency requests written comments and suggestions from the public and affected agencies concerning the proposed collection of information. Your comments are being solicited to permit the agency to:

- Evaluate whether the proposed collection of information is necessary for the proper performance of the functions of the agency, including whether the information will have practical utility.
- Evaluate the accuracy of the agency's estimate of the burden of the proposed collection, including the validity of the methodology and assumptions used.
- Enhance the quality, utility, and clarity of the information to be collected.
- Minimize the reporting burden on those who are to respond, including through the use of automated collection techniques or other forms of technology.

Abstract of proposed collection: The information will be used to evaluate whether or not a particular article is covered by the U.S. Munitions List; to change the U.S. Munitions List category designation; to confirm the U.S. Munitions List Category designation; to remove a defense article from the U.S. Munitions List; or to reconsider a previous commodity jurisdiction determination.

³ AUTOM is the Exchange's electronic order delivery, routing, execution and reporting system, which provides for the automatic entry and routing of equity option and index option orders to the Exchange trading floor. Orders delivered through AUTOM may be executed manually, or certain orders are eligible for AUTOM's automatic execution features, Book Sweep and Book Match. Equity option and index option specialists are required by the Exchange to participate in AUTOM and its features and enhancements. See Exchange Rule 1080.

⁴ The Exchange defines an "Order Entry Firm" as a member organization of the Exchange that is able to route orders to AUTOM. See Exchange Rule 1080(c)(ii)(A)(1).

⁵ The term "off-floor broker-dealer" means a broker-dealer that delivers orders from off the floor of the Exchange for the proprietary account(s) of such broker-dealer, including a market maker located on an exchange or trading floor other than the Exchange's trading floor who elects to deliver orders via AUTOM for the proprietary account(s) of such market maker. See Exchange Rule 1080(b)(i)(C).

⁶ In Amendment No. 1, the Exchange revised the status of the proposed rule change from one that would take effect upon filing with the Commission under Section 19(b)(3)(A) of the Act, 15 U.S.C. 78s(b)(3)(A), to one that is filed under Section 19(b)(2) of the Act.

⁷ See Securities Exchange Act Release No. 51640 (April 29, 2005), 70 FR 24156.

⁸ In approving this proposed rule change, the Commission notes that it has considered the proposed rule's impact on efficiency, competition, and capital formation. 15 U.S.C. 78c(f).

⁹ 15 U.S.C. 78f(b).

¹⁰ 15 U.S.C. 78f(b)(5).

FOR ADDITIONAL INFORMATION: Public comments, or requests for additional information, regarding the collection listed in this notice should be directed to Angelo Chang, Acting Director, Office of Defense Trade Controls Management, Directorate of Defense Trade Controls, Bureau of Political-Military Affairs, SA-1, Room H1200, 2401 E. Street, NW., Washington, DC 20522-0112, (202) 663-2700. E-mail: ChangAA@state.gov.

Dated: May 5, 2005.

Gregory M. Suchan,
Deputy Assistant Secretary for Defense Trade Controls, Bureau of Political-Military Affairs, Department of State.

[FR Doc. 05-12091 Filed 6-17-05; 8:45 am]

BILLING CODE 4710-25-P

DEPARTMENT OF STATE

[Public Notice 5112]

Culturally Significant Objects Imported for Exhibition Determinations: “Daughter of Re: Hatshepsut, King of Egypt”

SUMMARY: Notice is hereby given of the following determinations: Pursuant to the authority vested in me by the Act of October 19, 1965 (79 Stat. 985; 22 U.S.C. 2459), Executive Order 12047 of March 27, 1978, the Foreign Affairs Reform and Restructuring Act of 1998 (112 Stat. 2681, *et seq.*; 22 U.S.C. 6501 note, *et seq.*), Delegation of Authority No. 234 of October 1, 1999, Delegation of Authority No. 236 of October 19, 1999, as amended, and Delegation of Authority No. 257 of April 15, 2003 [68 FR 19875], I hereby determine that the objects to be included in the exhibition “Daughter of Re: Hatshepsut, King of Egypt,” imported from abroad for temporary exhibition within the United States, are of cultural significance. The objects are imported pursuant to loan agreements with the foreign owners. I also determine that the exhibition or display of the exhibit objects at the Fine Arts Museum of San Francisco, San Francisco, California, from on or about October 15, 2005 to on or about February 5, 2006, and at The Metropolitan Museum of Art, New York, New York, from on or about March 21, 2006 to on or about July 9, 2006, and at the Kimbell Art Museum, Fort Worth, Texas, from on or about August 26, 2006 to on or about December 31, 2006, and at possible additional venues yet to be determined, is in the national interest. Public Notice of these Determinations is ordered to be published in the **Federal Register**.

FOR FURTHER INFORMATION CONTACT: For further information, including a list of

the exhibit objects, contact Wolodymyr R. Sulzysky, the Office of the Legal Adviser, Department of State, (telephone: (202) 453-8050). The address is Department of State, SA-44, 301 4th Street, SW., Room 700, Washington, DC 20547-0001.

Dated: June 14, 2005.

C. Miller Crouch,
Principal Deputy Assistant Secretary for Educational and Cultural Affairs, Department of State.

[FR Doc. 05-12089 Filed 6-17-05; 8:45 am]

BILLING CODE 4710-08-P

DEPARTMENT OF STATE

[Public Notice 5113]

Culturally Significant Objects Imported for Exhibition Determinations: “Prague, the Crown of Bohemia, 1347-1437”

SUMMARY: Notice is hereby given of the following determinations: Pursuant to the authority vested in me by the Act of October 19, 1965 (79 Stat. 985; 22 U.S.C. 2459), Executive Order 12047 of March 27, 1978, the Foreign Affairs Reform and Restructuring Act of 1998 (112 Stat. 2681, *et seq.*; 22 U.S.C. 6501 note, *et seq.*), Delegation of Authority No. 234 of October 1, 1999, and Delegation of Authority No. 236 of October 19, 1999, as amended, and Delegation of Authority No. 257 of April 15, 2003 [68 FR 19875], I hereby determine that the objects to be included in the exhibition “Prague, the Crown of Bohemia, 1347-1437,” imported from abroad for temporary exhibition within the United States, are of cultural significance. The objects are imported pursuant to a loan agreement with the foreign owners. I also determine that the exhibition or display of the exhibit objects at The Metropolitan Museum of Art, New York, NY from on or about September 19, 2005 to on or about January 3, 2006, and at possible additional venues yet to be determined, is in the national interest. Public Notice of these determinations is ordered to be published in the **Federal Register**.

FOR FURTHER INFORMATION CONTACT: For further information, including a list of the exhibit objects, contact Carol B. Epstein, Attorney-Adviser, Office of the Legal Adviser, Department of State, (telephone: 202/453-8048). The address is Department of State, SA-44, 301 4th Street, SW., Room 700, Washington, DC 20547-0001.

Dated: June 14, 2005.

C. Miller Crouch,
Principal Deputy Assistant Secretary for Educational and Cultural Affairs, Department of State.

[FR Doc. 05-12090 Filed 6-17-05; 8:45 am]

BILLING CODE 4710-08-P

OFFICE OF THE UNITED STATES TRADE REPRESENTATIVE

Determination of Chile's Trade Surplus in Sugar and Certain Sugar Containing Products

AGENCY: Office of the United States Trade Representative.

ACTION: Notice.

SUMMARY: Pursuant to U.S. Note 12(a) to subchapter XI of chapter 99 of the Harmonized Tariff Schedule of the United States (HTS), the Office of the United States Trade Representative (USTR) is providing notice of its determination that Chile does not have a trade surplus in sugar, sugar-containing products, and high fructose corn syrup.

EFFECTIVE DATE: June 20, 2005.

ADDRESSES: Inquiries may be mailed or delivered to Beth Leier, Deputy Director of Agricultural Affairs, Office of Agricultural Affairs, Office of the United States Trade Representative, 600 17th Street, NW., Washington, DC 20508.

FOR FURTHER INFORMATION CONTACT: Beth Leier, Office of Agricultural Affairs, 202-395-6127.

SUPPLEMENTARY INFORMATION: Pursuant to section 201 of the United States—Chile Free Trade Agreement Implementation Act (Pub. L. 108-77; 117 Stat. 909, 913; 19 USC 3805 note), Presidential Proclamation No. 7746 of December 30, 2003 (68 FR 75789), implemented on behalf of the United States the United States—Chile Free Trade Agreement (FTA) and modified the HTS to reflect the tariff and rules of origin treatment provided for in the FTA.

Pursuant to U.S. Note 12(a) to subchapter XI of HTS chapter 99, beginning in 2004 and annually thereafter, USTR is required to publish in the **Federal Register** a determination of the amount of Chile's trade surplus, by volume, with all sources for goods in Harmonized System (HS) subheadings 1701.11, 1701.12, 1701.91, 1701.99, 1702.20, 1702.30, 1702.40, 1702.60, 1702.90, 1806.10, 2101.12, 2101.20, and 2106.90, except that Chile's imports of U.S. goods under HS subheadings 1702.40 and 1702.60 that qualify for preferential treatment under the FTA

may not be included in the calculation of Chile's trade surplus. During calendar year 2004, the most recent year for which data is available, Chile's imports of the foregoing goods exceeded its exports by 299,120 metric tons according to data published by its customs authority, the *Servicio Nacional de Aduana*. Accordingly, based on this data, USTR determines that Chile's trade surplus for 2004 is negative and sugar exports from Chile are not eligible to enter the United States in 2005.

Allen F. Johnson,

Chief Agricultural Negotiator.

[FR Doc. 05-12093 Filed 6-17-05; 8:45 am]

BILLING CODE 3190-W5-P

OFFICE OF THE UNITED STATES TRADE REPRESENTATIVE

Technical Corrections to the Harmonized Tariff Schedule of the United States

AGENCY: Office of the United States Trade Representative.

ACTION: Technical corrections to the Harmonized Tariff Schedule of the United States.

SUMMARY: The United States Trade Representative ("the USTR") is modifying the Harmonized Tariff Schedule of the United States (HTS) as set forth in the Annex to this notice, pursuant to authority granted to the President in section 604 of the Trade Act of 1974 ("Trade Act") and delegated to the USTR in Presidential Proclamation No. 6969 of January 27, 1997 (62 FR 4415). These modifications will correct errors in the tariff rates that

are being applied to a small number of products that are originating goods of Chile under the United States—Chile Free Trade Agreement. The modifications will ensure that the intended tariff treatment is accorded to the products at issue.

ADDRESSES: Office of the United States Trade Representative, 600 17th Street, NW., Washington, DC 20508.

FOR FURTHER INFORMATION CONTACT: Leslie Yang, Director for Mercosur, (202) 395-5190.

Explanation of Technical Corrections

This notice makes technical corrections to the HTS to remedy errors included in Presidential Proclamation No. 7746 of December 30, 2003 (68 FR 75789) implementing the United States—(Chile Free Trade Agreement (FTA). The corrections pertain to the tariff rates that are being applied to a small number of originating goods of Chile under the FTA. The modifications will ensure that the intended tariff treatment is accorded to the products at issue.

Paragraph 2 of the General Notes of the United States to Annex 3.3 of the FTA states that the base rates of duty set forth in the U.S. Schedule to the FTA reflect the lower of the HTSUS Column 1 General rates of duty in effect January 1, 2002 or the rate scheduled for January 1, 2004 under existing WTO duty-elimination commitments. For a small number of originating goods of Chile, the January 1, 2002 rates were set forth in the schedule, although the rates scheduled for January 1, 2004 were lower. As a consequence of this error, the tariff rates being applied to these products are higher than the intended rates under the FTA. The Annex to this

notice modifies the HTS to apply the proper tariff rates to the products at issue. The modifications shall apply with respect to originating goods of Chile, under the terms of general note 26 to the HTS, entered, or withdrawn from warehouse for consumption, on or after January 1, 2004.

Requests for application of the tariff modification and duty treatment provided for herein must be filed with the Bureau of Customs and Border Protection (CBP) and contain sufficient information to enable CBP to identify each relevant entry (including but not limited to the entry number for the shipment concerned).

Rob Portman,

Ambassador, United States Trade Representative.

Annex

Effective with respect to goods of Chile, under the terms of general note 26 to the tariff schedule, entered, or withdrawn from warehouse for consumption, on or after January 1, 2004, and on January 1 of each of the successive years, for each of the enumerated subheadings in the following table, the Rates of Duty 1 Special subcolumn in the HTS is modified (i) by inserting in such subcolumn for each subheading the rate of duty specified for such subheading in the January 1, 2004 column followed by the symbol "CL" in parentheses, and (ii) for each of the subsequent dated columns the rates of duty that are followed by the symbol "CL" in parentheses are deleted and the rates of duty for such dated column are inserted in such subheadings in lieu thereof.

HTS Sub-heading	Base Rate	2004	2005	2006	2007	2008	2009	2010	2011	2012	2013
6503.00.90	13.5¢/kg + 6.3% + 1.9¢/article	10.1¢/kg + 4.7% + 1.4¢/article	6.7¢/kg + 3.1% + 0.9¢/article	3.3¢/kg + 1.5% + 0.4¢/article	Free	Free	Free	Free	Free	Free	Free.
6505.90.25	7.5%	5.6%	3.7%	1.8%	Free	Free	Free	Free	Free	Free	Free.
6505.90.30	25.4¢/kg + 7.7%	19¢/kg + 5.7%	12.7¢/kg + 3.8%	6.3¢/kg + 1.9%	Free	Free	Free	Free	Free	Free	Free.
6505.90.60	20¢/kg + 7%	15¢/kg + 5.2%	10¢/kg + 3.5%	5¢/kg + 1.7%	Free	Free	Free	Free	Free	Free	Free.
6505.90.90	20.7¢/kg + 7.5%	15.5¢/kg + 5.6%	10.3¢/kg + 3.7%	5.1¢/kg + 1.8%	Free	Free	Free	Free	Free	Free	Free.
6907.10.00	10%	9%	8%	7%	6%	5%	4%	3%	2%	1%	Free.
6907.90.00	10%	9%	8%	7%	6%	5%	4%	3%	2%	1%	Free.
6908.10.10	10%	9%	8%	7%	6%	5%	4%	3%	2%	1%	Free.
6908.10.50	8.5%	7.6%	6.8%	5.9%	5.1%	4.2%	3.4%	2.5%	1.7%	0.8%	Free.
6908.90.00	8.5%	7.6%	6.8%	5.9%	5.1%	4.2%	3.4%	2.5%	1.7%	0.8%	Free.
6911.10.80	20.8%	18.7%	16.6%	14.5%	12.4%	10.4%	8.3%	6.2%	4.1%	2%	Free.
6912.00.20	28%	25.2%	22.4%	19.6%	16.8%	14%	11.2%	8.4%	5.6%	2.8%	Free.
7013.21.10	15%	13.1%	11.2%	9.3%	7.5%	5.6%	3.7%	1.8%	Free	Free.	Free.
7013.29.10	28.5%	25.6%	22.8%	19.9%	17.1%	14.2%	11.4%	8.5%	5.7%	2.8%	Free.
7013.29.20	22.5%	20.2%	18%	15.7%	13.5%	11.2%	9%	6.7%	4.5%	2.2%	Free.
7013.29.50	7.5%	6.5%	5.6%	4.6%	3.7%	2.8%	1.8%	0.9%	Free	Free.	Free.
7013.31.10	15%	13.1%	11.2%	9.3%	7.5%	5.6%	3.7%	1.8%	Free	Free.	Free.
7013.32.20	22.5%	20.2%	18%	15.7%	13.5%	11.2%	9%	6.7%	4.5%	2.2%	Free.
7013.32.30	11.3%	9.8%	8.4%	7%	5.6%	4.2%	2.8%	1.4%	Free	Free.	Free.
7013.39.20	22.5%	20.2%	18%	15.7%	13.5%	11.2%	9%	6.7%	4.5%	2.2%	Free.

HTS Sub-heading	Base Rate	2004	2005	2006	2007	2008	2009	2010	2011	2012	2013
7013.39.30	11.3%	9.8%	8.4%	7%	5.6%	4.2%	2.8%	1.4%	Free	Free	Free.
7013.99.10	15%	13.1%	11.2%	9.3%	7.5%	5.6%	3.7%	1.8%	Free	Free	Free.
7013.99.80	11.3%	9.8%	8.4%	7%	5.6%	4.2%	2.8%	1.4%	Free	Free	Free.
8213.00.90	3¢ each + 3%	2.6¢ each + 2.6%	2.2¢ each + 2.2%	1.8¢ each + 1.8%	1.5¢ each + 1.5%	1.1¢ each + 1.1%	0.7¢ each + 0.7%	0.3¢ each + 0.3%	Free	Free	Free.
9612.10.90	7.9%	5.9%	3.9%	1.9%	Free	Free	Free	Free	Free	Free	Free.
9911.69.10	25%	22.5%	20%	17.5%	15%	12.5%	10%	7.5%	5%	2.5%	Free.

[FR Doc. 05-12092 Filed 6-17-05; 8:45 am]

BILLING CODE 3190-W5-P

OFFICE OF THE UNITED STATES TRADE REPRESENTATIVE

[Docket No. WTO/DS317]

WTO Dispute Settlement Proceeding Regarding United States—Measures Affecting Trade in Large Civil Aircraft

AGENCY: Office of the United States Trade Representative.

ACTION: Notice; request for comments.

SUMMARY: The Office of the United States Trade Representative (“USTR”) is providing notice of the request by the European Communities (“EC”) for the establishment of a dispute settlement panel under the Marrakesh Agreement Establishing the World Trade Organization (“WTO Agreement”) to examine certain U.S. measures affecting trade in large civil aircraft (“LCA”). The request for the establishment of a panel alleges that such measures are inconsistent with various provisions of the Agreement on Subsidies and Countervailing Measures (“SCM Agreement”) and the General Agreement on Tariffs and Trade 1994 (“GATT 1994”). USTR invites written comments from the public concerning the issues raised in this dispute.

DATES: Although USTR will accept any comments received during the course of the dispute settlement proceedings, comments should be submitted on or before July 22, 2005 to be assured of timely consideration by USTR.

ADDRESSES: Comments should be submitted (i) electronically, to FR0506@ustr.eop.gov, with “United States—Aircraft (DS317)” in the subject line, or (ii) by fax, to Sandy McKinzy at (202) 395-3640, with a confirmation copy sent electronically to the e-mail address above.

FOR FURTHER INFORMATION CONTACT: Willis S. Martyn III, Associate General Counsel, Office of the United States Trade Representative, 600 17th Street, NW., Washington, DC 20508, (202) 395-3581; or Jonathan S. Kallmer, Assistant General Counsel, Office of the United States Trade Representative, 600 17th

Street, NW., Washington, DC 20508, (202) 395-3150.

SUPPLEMENTARY INFORMATION: Section 127(b) of the Uruguay Round Agreements Act (“URAA”) (19 U.S.C. 3537(b)) requires that notice and opportunity for comment be provided after the United States submits or receives a request for the establishment of a WTO dispute settlement panel. Consistent with this obligation, USTR is providing notice that the establishment of a panel has been requested pursuant to the Understanding on Rules and Procedures Governing the Settlement of Disputes (“DSU”). The EC’s request for the establishment of a panel may be found at <http://www.wto.org> contained in a document designated as WT/DS317/2. If a panel is established, such panel, which would hold its meetings in Geneva, Switzerland, would be expected to issue a report on its findings and recommendations within six to nine months after it is established.

Major Issues Raised and Legal Basis of the Complaint

On October 6, 2004, the EC requested consultations with the United States with respect to certain U.S. measures affecting trade in LCA. Consultations were held on November 5, 2004.

On May 31, 2005, the EC requested the establishment of a panel pursuant to Article 6 of the DSU, Article XXIII:2 of the GATT 1994, and Articles 4, 7, and 30 of the SCM Agreement with respect to such measures. In its request, the EC alleges that such measures are inconsistent with Articles 3.1(a), 3.1(b), 3.2, 5(a), 5(c), 6.3(a), 6.3(b), and 6.3(c) of the SCM Agreement and Article III:4 of the GATT 1994. In particular, the EC claims that WTO-inconsistent subsidies were provided to the U.S. LCA industry by:

1. State and local governments in the States of Washington, Kansas, and Illinois through financial incentives such as tax advantages, bond financing, lease arrangements, corporate headquarters relocation assistance, research funding, infrastructure measures, and other measures;
2. The National Aeronautics and Space Administration (“NASA”), Department of Defense (“DoD”), and

Department of Commerce (“DOC”) through research and development (“R&D”) contracts, allowances, and other programs;

3. NASA, DoD, and DOC through the waiver of patent rights, the protection of trade secrets, and the granting of exclusive rights to data;

4. NASA and DoD through the procurement of goods on better than commercial terms;

5. NASA and DoD through the provision of personnel and research, test, and evaluation facilities support on a non-commercial basis;

6. The Department of Labor through a grant of funds to Edmonds Community College in the State of Washington; and

7. The U.S. Government through the Federal tax system, specifically through the American Jobs Creation Act of 2004, among other measures.

Public Comment: Requirements for Submissions

Interested persons are invited to submit written comments concerning the issues raised in the EC’s request for the establishment of a panel. Persons submitting comments may either send one copy by fax to Sandy McKinzy at (202) 395-3640, or transmit a copy electronically to FR0506@ustr.eop.gov, with “United States—Aircraft (DS317)” in the subject line. For documents sent by fax, USTR requests that the submitter provide a confirmation copy electronically. USTR encourages the submission of documents in Adobe PDF format, as attachments to an electronic mail. Interested persons who make submissions by electronic mail should not provide separate cover letters; information that might appear in a cover letter should be included in the submission itself. Similarly, to the extent possible, any attachments to the submission should be included in the same file as the submission itself, and not as separate files.

Comments must be in English. A person requesting that information contained in a comment submitted by that person be treated as confidential business information must certify that such information is business confidential and would not customarily be released to the public by the

submitter. Confidential business information must be clearly designated as such and the submission must be marked "BUSINESS CONFIDENTIAL" at the top and bottom of the cover page and each succeeding page of the submission.

Information or advice contained in a comment submitted, other than business confidential information, may be determined by USTR to be confidential in accordance with section 135(g)(2) of the Trade Act of 1974 (19 U.S.C. 2155(g)(2)). If the submitter believes that information or advice may qualify as such, the submitter—

(1) Must clearly so designate the information or advice;

(2) Must clearly mark the material as "SUBMITTED IN CONFIDENCE" at the top and bottom of the cover page and each succeeding page of the submission; and

(3) Is encouraged to provide a non-confidential summary of the information or advice.

Pursuant to section 127(e) of the URAA (19 U.S.C. 3537(e)), USTR will maintain a file on this dispute settlement proceeding, accessible to the public, in the USTR Reading Room, which is located at 1724 F Street, NW., Washington, DC 20508. The public file will include non-confidential comments received by USTR from the public with respect to the dispute; the U.S. submissions to the panel in the dispute, the submissions, or non-confidential summaries of submissions, to the panel received from other participants in the dispute, as well as the report of the panel; and, if applicable, the report of the Appellate Body. An appointment to review the public file may be made by calling the USTR Reading Room at (202) 395-6186. The USTR Reading Room is open to the public from 9:30 a.m. to 12 p.m. and 1 p.m. to 4 p.m., Monday through Friday.

Daniel E. Brinza,

Assistant United States Trade Representative for Monitoring and Enforcement.

[FR Doc. 05-12023 Filed 6-17-05; 8:45 am]

BILLING CODE 3190-W5-P

OFFICE OF THE UNITED STATES TRADE REPRESENTATIVE

[Docket No. WTO/DS316]

WTO Dispute Settlement Proceeding Regarding European Communities and Certain Member States—Measures Affecting Trade in Large Civil Aircraft

AGENCY: Office of the United States Trade Representative.

ACTION: Notice; request for comments.

SUMMARY: The Office of the United States Trade Representative ("USTR") is providing notice that on May 31, 2005, in accordance with the Marrakesh Agreement Establishing the World Trade Organization ("WTO Agreement"), the United States requested the establishment of a dispute settlement panel to examine certain measures of the European Communities ("EC") and of Germany, France, the United Kingdom, and Spain ("member States") affecting trade in large civil aircraft ("LCA"). The request alleges that such measures are inconsistent with various provisions of the Agreement on Subsidies and Countervailing Measures ("SCM Agreement") and the General Agreement on Tariffs and Trade 1994 ("GATT 1994"). USTR invites written comments from the public concerning the issues raised in this dispute.

DATES: Although USTR will accept any comments received during the course of the dispute settlement proceedings, comments should be submitted on or before July 22, 2005 to be assured of timely consideration by USTR.

ADDRESSES: Comments should be submitted (i) electronically, to FR0505@ustr.eop.gov, with "European Communities and Certain Member States—Aircraft (DS316)" in the subject line, or (ii) by fax, to Sandy McKinzy at (202) 395-3640, with a confirmation copy sent electronically to the e-mail address above.

FOR FURTHER INFORMATION CONTACT:

David J. Ross, Associate General Counsel, Office of the United States Trade Representative, 600 17th Street, NW., Washington, DC 20508, (202) 395-3581; or William D. Hunter, Associate General Counsel, Office of the United States Trade Representative, 600 17th Street, NW., Washington, DC 20508, (202) 395-3582.

SUPPLEMENTARY INFORMATION: Section 127(b) of the Uruguay Round Agreements Act ("URAA") (19 U.S.C. 3537(b)) requires that notice and opportunity for comment be provided after the United States submits or receives a request for the establishment of a WTO dispute settlement panel. Consistent with this obligation, USTR is providing notice that the establishment of a panel has been requested pursuant to the Understanding on Rules and Procedures Governing the Settlement of Disputes ("DSU"). The U.S. request for the establishment of a panel may be found at www.wto.org contained in a document designated as WT/DS316/2. If a panel is established, such panel, which would hold its meetings in Geneva, Switzerland, would be

expected to issue a report on its findings and recommendations within six to nine months after it is established.

Major Issues Raised and Legal Basis of the Complaint

On October 6, 2004, the United States requested consultations with the EC and the Governments of the member States with respect to certain measures of the EC and the member States affecting trade in LCA. Consultations were held on November 4, 2004.

On May 31, 2005, the United States requested the establishment of a panel pursuant to Article 6 of the DSU, Article XXIII:2 of the GATT 1994, and Articles 4, 7, and 30 of the SCM Agreement with respect to such measures. In its request, the United States alleges that such measures are inconsistent with Articles 3.1(a), 3.2, 5(a), 5(c), 6.3(a), 6.3(b), and 6.3(c) of the SCM Agreement and Article XVI:1 of the GATT 1994. In particular, the measures that the United States claims are WTO-inconsistent subsidies include:

1. The provision by the member States of financing for LCA design and development to the Airbus companies on non-commercial terms, such as financing with no interest rates, below-market interest rates, or repayment obligations tied to sales ("launch aid");

2. The provision by the EC and the member States, through the European Investment Bank, of financing to the Airbus companies for LCA design, development, and other purposes;

3. The provision by the EC and the member States of financial contributions to develop, expand, and upgrade facilities and other infrastructure for the Airbus companies;

4. The assumption and forgiveness by the EC and the member States of debt resulting from launch aid and other financing for LCA development and production;

5. The provision by the EC and the member States to the Airbus companies of equity infusions and grants, including through government-owned and government-controlled banks;

6. The provision by the EC and the member States of financial contributions for aeronautics-related research, development, and demonstration undertaken by Airbus or to the benefit of Airbus; and

7. Any other measures that involve a financial contribution by the EC or any of the member States that benefit the Airbus companies.

Public Comment: Requirements for Submissions

Interested persons are invited to submit written comments concerning

the issues raised in the United States request for the establishment of a panel. Persons submitting comments may either send one copy by fax to Sandy McKinzy at (202) 395-3640, or transmit a copy electronically to FR0505@ustr.eop.gov, with "European Communities and Certain Member States—Aircraft (DS316)" in the subject line. For documents sent by fax, USTR requests that the submitter provide a confirmation copy electronically. USTR encourages the submission of documents in Adobe PDF format, as attachments to an electronic mail. Interested persons who make submissions by electronic mail should not provide separate cover letters; information that might appear in a cover letter should be included in the submission itself. Similarly, to the extent possible, any attachments to the submission should be included in the same file as the submission itself, and not as separate files.

Comments must be in English. A person requesting that information contained in a comment submitted by that person be treated as confidential business information must certify that such information is business confidential and would not customarily be released to the public by the submitter. Confidential business information must be clearly designated as such and the submission must be marked "Business Confidential" at the top and bottom of the cover page and each succeeding page of the submission.

Information or advice contained in a comment submitted, other than business confidential information, may be determined by USTR to be confidential in accordance with section 135(g)(2) of the Trade Act of 1974 (19 U.S.C. 2155(g)(2)). If the submitter believes that information or advice may qualify as such, the submitter—

(1) Must clearly so designate the information or advice;

(2) Must clearly mark the material as "Submitted in Confidence" at the top and bottom of the cover page and each succeeding page of the submission; and

(3) Is encouraged to provide a non-confidential summary of the information or advice.

Pursuant to section 127(e) of the URAA (19 U.S.C. 3537(e)), USTR will maintain a file on this dispute settlement proceeding, accessible to the public, in the USTR Reading Room, which is located at 1724 F Street, NW., Washington, DC 20508. The public file will include non-confidential comments received by USTR from the public with respect to the dispute; the U.S. submissions to the panel in the dispute,

the submissions, or non-confidential summaries of submissions, to the panel received from other participants in the dispute, as well as the report of the panel; and, if applicable, the report of the Appellate Body. An appointment to review the public file may be made by calling the USTR Reading Room at (202) 395-6186. The USTR Reading Room is open to the public from 9:30 a.m. to 12 p.m. and 1 p.m. to 4 p.m., Monday through Friday.

Daniel E. Brinza,

Assistant United States Trade Representative for Monitoring and Enforcement.

[FR Doc. 05-12024 Filed 6-17-05; 8:45 am]

BILLING CODE 3190-W5-P

DEPARTMENT OF THE TREASURY

Internal Revenue Service

Open Meeting of the Area 1 Taxpayer Advocacy Panel (Including the States of New York, Connecticut, Massachusetts, Rhode Island, New Hampshire, Vermont and Maine)

AGENCY: Internal Revenue Service (IRS), Treasury.

ACTION: Notice.

SUMMARY: An open meeting of the Area 1 Taxpayer Advocacy Panel will be conducted (via teleconference). The Taxpayer Advocacy Panel is soliciting public comments, ideas and suggestions on improving customer service at the Internal Revenue Service.

DATES: The meeting will be held Wednesday, July 6, 2005.

FOR FURTHER INFORMATION CONTACT: Marisa Knispel at 1-888-912-1227 (toll-free), or 718-488-3557 (non toll-free).

SUPPLEMENTARY INFORMATION: An open meeting of the Area 1 Taxpayer Advocacy Panel will be held Wednesday, July 6, 2005 from 3 p.m. et to 4 p.m. et via a telephone conference call. Individual comments will be limited to 5 minutes. If you would like to have the TAP consider a written statement, please call 1-888-912-1227 or 718-488-3557, or write Marisa Knispel, TAP Office, 10 MetroTech Center, 625 Fulton Street, Brooklyn, NY 11201. Due to limited conference lines, notification of intent to participate in the telephone conference call meeting must be made with Marisa Knispel. Ms. Knispel can be reached at 1-888-912-1227 or 718-488-3557, or post comments to the Web site: <http://www.improveirs.org>.

The agenda will include various IRS issues.

Dated: June 13, 2005.

Martha Curry,

Acting Director, Taxpayer Advocacy Panel.

[FR Doc. 05-12046 Filed 6-17-05; 8:45 am]

BILLING CODE 4830-01-M

DEPARTMENT OF THE TREASURY

Internal Revenue Service

Open Meeting of the Taxpayer Advocacy Panel Multilingual Initiative (MLI) Issue Committee Will Be Conducted (Via Teleconference)

AGENCY: Internal Revenue Service (IRS), Treasury.

ACTION: Notice.

SUMMARY: An open meeting of the Taxpayer Advocacy Panel Multilingual Initiative (MLI) Issue Committee will be conducted (via teleconference). The Taxpayer Advocacy Panel is soliciting public comments, ideas, and suggestions on improving customer service at the Internal Revenue Service.

DATES: The meeting will be held Tuesday, July 12, 2005 from 2:30 p.m. to 3:30 p.m. ET.

FOR FURTHER INFORMATION CONTACT: Inez E. De Jesus at 1-888-912-1227, or 954-423-7977

SUPPLEMENTARY INFORMATION: Notice is hereby given pursuant to section 10 (a) (2) of the Federal Advisory Committee Act, 5 U.S.C. App. (1988) that an open meeting of the Taxpayer Advocacy Panel Multilingual Initiative Issue Committee will be held Tuesday, July 12, 2005 from 2:30 p.m. to 3:30 p.m. ET via a telephone conference call. If you would like to have the TAP consider a written statement, please call 1-888-912-1227 or 954-423-7977, or write Inez E. De Jesus, TAP Office, 1000 South Pine Island Rd., Suite 340, Plantation, FL 33324. Due to limited conference lines, notification of intent to participate in the telephone conference call meeting must be made with Inez E. De Jesus. Ms. De Jesus can be reached at 1-888-912-1227 or 954-423-7977, or post comments to the Web site: <http://www.improveirs.org>.

The agenda will include the following: Various IRS issues.

Dated: June 13, 2005.

Martha Curry,

Acting Director, Taxpayer Advocacy Panel.

[FR Doc. E5-3159 Filed 6-17-05; 8:45 am]

BILLING CODE 4830-01-P

DEPARTMENT OF THE TREASURY**Internal Revenue Service****Open Meeting of the Area 5 Taxpayer Advocacy Panel (Including the States of Iowa, Kansas, Minnesota, Missouri, Nebraska, Oklahoma, and Texas)**

AGENCY: Internal Revenue Service (IRS), Treasury.

ACTION: Notice.

SUMMARY: An open meeting of the Area 5 Taxpayer Advocacy Panel will be conducted. The Taxpayer Advocacy Panel is soliciting public comment, ideas, and suggestions on improving customer service at the Internal Revenue Service.

DATES: The meeting will be held Monday, July 11, 2005, at 2 p.m. Central Time.

FOR FURTHER INFORMATION CONTACT: Mary Ann Delzer at 1-888-912-1227, or (414) 297-1604.

SUPPLEMENTARY INFORMATION: Notice is hereby given pursuant to Section 10(a)(2) of the Federal Advisory Committee Act, 5 U.S.C. App. (1988) that a meeting of the Area 5 Taxpayer Advocacy Panel will be held Monday, July 11, 2005, at 2 p.m. Central Time via a telephone conference call. You can submit written comments to the panel by faxing to (414) 297-1623, or by mail to Taxpayer Advocacy Panel, Stop1006MIL, 310 West Wisconsin Avenue, Milwaukee, WI 53203-2221, or you can contact us at <http://www.improveirs.org>. This meeting is not required to be open to the public, but because we are always interested in community input, we will accept public comments. Please contact Mary Ann Delzer at 1-888-912-1227 or (414) 297-1604 for additional information.

The agenda will include the following: Various IRS issues.

Dated: June 13, 2005.

Martha Curry,

Acting Director, Taxpayer Advocacy Panel.
[FR Doc. E5-3160 Filed 6-17-05; 8:45 am]

BILLING CODE 4830-01-P

DEPARTMENT OF THE TREASURY**Internal Revenue Service****Open Meeting of the Small Business/Self Employed—Taxpayer Burden Reduction Committee of the Taxpayer Advocacy Panel**

AGENCY: Internal Revenue Service (IRS), Treasury.

ACTION: Notice.

SUMMARY: An open meeting of the Small Business/Self Employed—Taxpayer Burden Reduction Committee of the Taxpayer Advocacy Panel will be conducted (via teleconference). The TAP will be discussing issues pertaining to increasing compliance and lessening the burden for Small Business/Self Employed individuals.

DATES: The meeting will be held Thursday, July 7, 2005.

FOR FURTHER INFORMATION CONTACT: Marisa Knispel at 1-888-912-1227 or 718-488-3557.

SUPPLEMENTARY INFORMATION: Notice is hereby given pursuant to Section 10(a)(2) of the Federal Advisory Committee Act, 5 U.S.C. App. (1988) that an open meeting of the Small Business/Self Employed—Taxpayer Burden Reduction Committee of the Taxpayer Advocacy Panel will be held Thursday, July 7, 2005 from 3 p.m. ET to 4:30 p.m. ET via a telephone conference call. If you would like to have the TAP consider a written statement, please call 1-888-912-1227 or 718-488-3557, or write to Marisa Knispel, TAP Office, 10 Metro Tech Center, 625 Fulton Street, Brooklyn, NY 11201. Due to limited conference lines, notification of intent to participate in the telephone conference call meeting must be made with Marisa Knispel. Ms. Knispel can be reached at 1-888-912-1227 or 718-488-3557, or post comments to the Web site: <http://www.improveirs.org>.

The agenda will include the following: Various IRS issues.

Dated: June 13, 2005.

Martha Curry,

Acting Director, Taxpayer Advocacy Panel.
[FR Doc. E5-3161 Filed 6-17-05; 8:45 am]

BILLING CODE 4830-01-P

DEPARTMENT OF THE TREASURY**Internal Revenue Service****Open Meeting of the Ad Hoc Committee of the Taxpayer Advocacy Panel**

AGENCY: Internal Revenue Service (IRS), Treasury.

ACTION: Notice.

SUMMARY: An open meeting of the Ad Hoc Committee of the Taxpayer Advocacy Panel will be conducted (via teleconference). The TAP will be discussing issues pertaining to lessening the burden for individuals. Recommendations for IRS systemic changes will be developed.

DATES: The meeting will be held Thursday, July 14, 2005.

FOR FURTHER INFORMATION CONTACT: Mary O'Brien at 1-888-912-1227, or 206-220-6096.

SUPPLEMENTARY INFORMATION: Notice is hereby given pursuant to Section 10(a)(2) of the Federal Advisory Committee Act, 5 U.S.C. App. (1988) that an open meeting of the Ad Hoc Committee of the Taxpayer Advocacy Panel will be held Thursday, July 14, 2005 from 4 p.m. Eastern Time to 5 p.m. Eastern Time via a telephone conference call. If you would like to have the TAP consider a written statement, please call 1-888-912-1227 or 206-220-6096, or write to Mary O'Brien, TAP Office, 915 2nd Avenue, MS W-406, Seattle, WA 98174 or you can contact us at <http://www.improveirs.org>. Due to limited conference lines, notification of intent to participate in the telephone conference call meeting must be made with Mary O'Brien. Ms O'Brien can be reached at 1-888-912-1227 or 206-220-6096.

The agenda will include the following: Various IRS issues.

Dated: June 13, 2005.

Martha Curry,

Acting Director, Taxpayer Advocacy Panel.
[FR Doc. E5-3162 Filed 6-17-05; 8:45 am]

BILLING CODE 4830-01-P

DEPARTMENT OF VETERANS AFFAIRS**Special Medical Advisory Group; Notice of Meeting**

The Department of Veterans Affairs gives notice under Pub. L. 92-463 (Federal Advisory Committee Act) that the Special Medical Advisory Group will meet on July 7, 2005. The meeting will be held in Room 830 at VA Central Office, 810 Vermont Avenue, NW., Washington, DC. The meeting is open to the public.

The purpose of the Group is to advise the Secretary and Under Secretary for Health on the care and treatment of disabled veterans, and other matters pertinent to the Department's Veterans Health Administration (VHA). The agenda for the meeting will include discussions on mental health, budget, research, Capital Asset Realignment for Enhanced Services (CARES), academic programs in transition, and returning service members.

Any member of the public wishing to attend should contact Juanita Leslie, Office of Administrative Operations (10B2), Veterans Health Administration, Department of Veterans Affairs at (202) 273-5882. No time will be set aside at this meeting for receiving oral

presentations from the public.
Statements, in written form, may be
submitted to Juanita Leslie before the

meeting or within 10 days after the
meeting.

Dated: June 14, 2005.

By Direction of the Secretary of Veterans
Affairs.

E. Philip Riggin,

Committee Management Officer.

[FR Doc. 05-12102 Filed 6-17-05; 8:45 am]

BILLING CODE 8320-01-M

Corrections

Federal Register

Vol. 70, No. 117

Monday, June 20, 2005

This section of the FEDERAL REGISTER contains editorial corrections of previously published Presidential, Rule, Proposed Rule, and Notice documents. These corrections are prepared by the Office of the Federal Register. Agency prepared corrections are issued as signed documents and appear in the appropriate document categories elsewhere in the issue.

DEPARTMENT OF AGRICULTURE

Animal and Plant Health Inspection Service

7 CFR Part 301

[Docket No. 03-077-1]

Treatments for Fruits and Vegetables

Correction

In proposed rule document 05-11460 beginning on page 33857 in the issue of

Friday, June 10, 2005, make the following correction:

§305.31 [Corrected]

On page 33870, in §305.31(a), in the table, under the Dose (gray) heading, in the last entry, “300” should read “400”.

[FR Doc. C5-11460 Filed 6-17-05; 8:45 am]

BILLING CODE 1505-01-D

DEPARTMENT OF TRANSPORTATION

Federal Aviation Administration

14 CFR Part 71

[Docket No. FAA-2005-20056; Airspace Docket No. 05-AEA-1]

Amendment of Class E Airspace; Harrisburg, PA

Correction

In rule document 05-11329 appearing on page 33347 in the issue of

Wednesday, June 8, 2005, make the following correction:

§ 71.1 [Corrected]

In the third column, in § 71.1, under the heading “AEA PA E5 Harrisburg, PA (Revised)”, in the fourth line, “70°07’49” N” should read “40°07’49” N”.

[FR Doc. C5-11329 Filed 6-17-05; 8:45 am]

BILLING CODE 1505-01-D



Federal Register

**Monday,
June 20, 2005**

Part II

The President

Proclamation 7911—Father's Day, 2005

**Executive Order 13379—Amendment to
Executive Order 13369, Relating to the
President's Advisory Panel on Federal Tax
Reform**

**Notice of June 17, 2005—Continuation of
the National Emergency With Respect to
the Risk of Nuclear Proliferation Created
by the Accumulation of Weapons-Usable
Fissile Material in the Territory of the
Russian Federation**

Presidential Documents

Title 3—

Proclamation 7911 of June 16, 2005

The President

Father's Day, 2005

By the President of the United States of America**A Proclamation**

Being a father is a great responsibility and a great joy. From the moment their children are born, fathers face the daily tasks of being mentors, protectors, providers, and friends. Fathers take great pride in watching their children take their first steps, learn to read, and attend their first day of school. On Father's Day, our Nation honors fathers across America, and we express our deep gratitude for their selfless love and sacrifices.

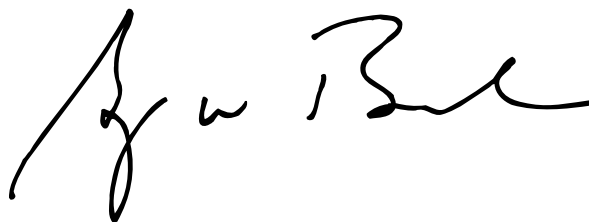
Caring, decent, and hardworking fathers give much of themselves. By offering unconditional love and providing guidance and discipline, a father is a source of stability and one of the most important influences on his children. A father's example helps shape the character and values that his children will carry with them into adulthood, and the lessons he teaches remain with them for a lifetime. By encouraging his sons and daughters to set high standards, work hard, and make good decisions, a father shows his children that they can meet life's challenges and be good citizens.

Responsible fatherhood is essential to a compassionate society in which all children are surrounded by love and taught the importance of respect, honesty, and integrity. My Administration commends all those who are working to strengthen the bonds between fathers and their children.

On Father's Day and all year long, we honor our Nation's fathers and express our love and appreciation for them. We also honor the many proud fathers who are serving our country on the front lines of freedom. We are grateful for their service and sacrifice, and we pray for them and their families. These men have answered a great call, and they set an example of duty and honor for all Americans.

NOW, THEREFORE, I, GEORGE W. BUSH, President of the United States of America, in accordance with a joint resolution of the Congress approved April 24, 1972, as amended (36 U.S.C. 109), do hereby proclaim June 19, 2005, as Father's Day. I direct the appropriate officials of the Government to display the flag of the United States on all Government buildings on this day. I also call upon State and local governments and citizens to observe this day with appropriate programs, ceremonies, and activities.

IN WITNESS WHEREOF, I have hereunto set my hand this sixteenth day of June, in the year of our Lord two thousand five, and of the Independence of the United States of America the two hundred and twenty-ninth.

A handwritten signature in black ink, appearing to read "G. W. Bush". The signature is fluid and cursive, with the first name "G." and last name "Bush" clearly distinguishable.

[FR Doc. 05-12283

Filed 6-17-05; 10:40 am]

Billing code 3195-01-P

Presidential Documents

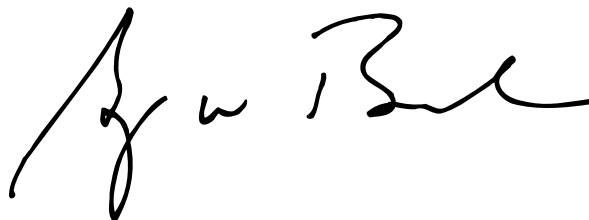
Executive Order 13379 of June 16, 2005

Amendment to Executive Order 13369, Relating to the President's Advisory Panel on Federal Tax Reform

By the authority vested in me as President by the Constitution and the laws of the United States of America, and to extend the reporting deadline of the President's Advisory Panel on Federal Tax Reform, it is hereby ordered as follows:

Section 1. Section 5 of Executive Order 13369 of January 7, 2005, is amended by deleting "July 31, 2005" and inserting in lieu thereof "September 30, 2005".

Sec. 2. This order is not intended to, and does not, create any right or benefit, substantive or procedural, enforceable at law or in equity, against the United States, its departments, agencies, entities, officers, employees or agents, or any other person.

A handwritten signature in black ink, appearing to read "G W Bush", is positioned above the typed name and date.

THE WHITE HOUSE,
June 16, 2005.

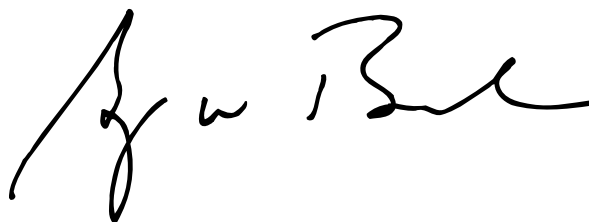
Presidential Documents

Notice of June 17, 2005

Continuation of the National Emergency With Respect to the Risk of Nuclear Proliferation Created by the Accumulation of Weapons-Usable Fissile Material in the Territory of the Russian Federation

On June 21, 2000, the President issued Executive Order 13159 (the "Order") blocking property and interests in property of the Government of the Russian Federation that are in the United States, that hereafter come within the United States, or that are or hereinafter come within the possession or control of United States persons that are directly related to the implementation of the Agreement Between the Government of the United States of America and the Government of the Russian Federation Concerning the Disposition of Highly Enriched Uranium Extracted from Nuclear Weapons, dated February 18, 1993, and related contracts and agreements (collectively, the "HEU Agreements"). The HEU Agreements allow for the downblending of highly enriched uranium derived from nuclear weapons to low enriched uranium for peaceful commercial purposes. The Order invoked the authority, *inter alia*, of the International Emergency Economic Powers Act, 50 U.S.C. 1701 *et seq.*, and declared a national emergency to deal with the unusual and extraordinary threat to the national security and foreign policy of the United States posed by the risk of nuclear proliferation created by the accumulation of a large volume of weapons-usable fissile material in the territory of the Russian Federation.

The national emergency declared on June 21, 2000, must continue beyond June 21, 2005, to provide continued protection from attachment, judgment, decree, lien, execution, garnishment, or other judicial process for the property and interests in property of the Government of the Russian Federation that are directly related to the implementation of the HEU Agreements and subject to U.S. jurisdiction. Therefore, in accordance with section 202(d) of the National Emergencies Act (50 U.S.C. 1622(d)), I am continuing for 1 year the national emergency with respect to weapons-usable fissile material in the territory of the Russian Federation. This notice shall be published in the **Federal Register** and transmitted to the Congress.



THE WHITE HOUSE,
June 17, 2005.

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Federal Register

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H.R. 1760/P.L. 109-15

To designate the facility of the United States Postal Service located at 215 Martin Luther King, Jr. Boulevard in Madison, Wisconsin, as the "Robert M. La Follette, Sr. Post Office Building". (June 17, 2005; 119 Stat. 337)

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Title	Stock Number	Price	Revision Date
1	(869-056-00001-4)	5.00	Jan. 1, 2005
2	(869-056-00002-2)	5.00	Jan. 1, 2005
3 (2003 Compilation and Parts 100 and 101)	(869-052-00002-7)	35.00	¹ Jan. 1, 2004
4	(869-056-00004-9)	10.00	⁴ Jan. 1, 2005
5 Parts:			
1-699	(869-056-00005-7)	60.00	Jan. 1, 2005
700-1199	(869-056-00006-5)	50.00	Jan. 1, 2005
1200-End	(869-056-00007-3)	61.00	Jan. 1, 2005
6	(869-056-00008-1)	10.50	Jan. 1, 2005
7 Parts:			
1-26	(869-056-00009-0)	44.00	Jan. 1, 2005
27-52	(869-056-00010-3)	49.00	Jan. 1, 2005
53-209	(869-056-00011-1)	37.00	Jan. 1, 2005
210-299	(869-056-00012-0)	62.00	Jan. 1, 2005
300-399	(869-056-00013-8)	46.00	Jan. 1, 2005
400-699	(869-056-00014-6)	42.00	Jan. 1, 2005
700-899	(869-056-00015-4)	43.00	Jan. 1, 2005
900-999	(869-056-00016-2)	60.00	Jan. 1, 2005
1000-1199	(869-056-00017-1)	22.00	Jan. 1, 2005
1200-1599	(869-056-00018-9)	61.00	Jan. 1, 2005
1600-1899	(869-056-00019-7)	64.00	Jan. 1, 2005
1900-1939	(869-056-00020-1)	31.00	Jan. 1, 2005
1940-1949	(869-056-00021-9)	50.00	Jan. 1, 2005
1950-1999	(869-056-00022-7)	46.00	Jan. 1, 2005
2000-End	(869-056-00023-5)	50.00	Jan. 1, 2005
8	(869-056-00024-3)	63.00	Jan. 1, 2005
9 Parts:			
1-199	(869-056-00025-1)	61.00	Jan. 1, 2005
200-End	(869-056-00026-0)	58.00	Jan. 1, 2005
10 Parts:			
1-50	(869-056-00027-8)	61.00	Jan. 1, 2005
51-199	(869-056-00028-6)	58.00	Jan. 1, 2005
200-499	(869-056-00029-4)	46.00	Jan. 1, 2005
500-End	(869-056-00030-8)	62.00	Jan. 1, 2005
11	(869-056-00031-6)	41.00	Jan. 1, 2005
12 Parts:			
1-199	(869-056-00032-4)	34.00	Jan. 1, 2005
200-219	(869-056-00033-2)	37.00	Jan. 1, 2005
220-299	(869-056-00034-1)	61.00	Jan. 1, 2005
300-499	(869-056-00035-9)	47.00	Jan. 1, 2005
500-599	(869-056-00036-7)	39.00	Jan. 1, 2005
600-899	(869-056-00037-5)	56.00	Jan. 1, 2005

Title	Stock Number	Price	Revision Date
900-End	(869-056-00038-3)	50.00	Jan. 1, 2005
13	(869-056-00039-1)	55.00	Jan. 1, 2005
14 Parts:			
1-59	(869-056-00040-5)	63.00	Jan. 1, 2005
60-139	(869-056-00041-3)	61.00	Jan. 1, 2005
140-199	(869-056-00042-1)	30.00	Jan. 1, 2005
200-1199	(869-056-00043-0)	50.00	Jan. 1, 2005
1200-End	(869-056-00044-8)	45.00	Jan. 1, 2005
15 Parts:			
0-299	(869-056-00045-6)	40.00	Jan. 1, 2005
300-799	(869-056-00046-4)	60.00	Jan. 1, 2005
800-End	(869-056-00047-2)	42.00	Jan. 1, 2005
16 Parts:			
0-999	(869-056-00048-1)	50.00	Jan. 1, 2005
1000-End	(869-056-00049-9)	60.00	Jan. 1, 2005
17 Parts:			
1-199	(869-056-00051-1)	50.00	Apr. 1, 2005
200-239	(869-052-00051-5)	58.00	Apr. 1, 2004
240-End	(869-052-00052-3)	62.00	Apr. 1, 2004
18 Parts:			
1-399	(869-052-00053-1)	62.00	Apr. 1, 2004
400-End	(869-052-00054-0)	26.00	Apr. 1, 2004
19 Parts:			
1-140	(869-052-00055-8)	61.00	Apr. 1, 2004
141-199	(869-056-00057-0)	58.00	Apr. 1, 2005
*200-End	(869-056-00058-8)	31.00	Apr. 1, 2005
20 Parts:			
1-399	(869-056-00059-6)	50.00	Apr. 1, 2005
400-499	(869-052-00059-1)	64.00	Apr. 1, 2004
500-End	(869-052-00060-9)	63.00	Apr. 1, 2004
21 Parts:			
1-99	(869-052-00061-2)	42.00	Apr. 1, 2004
*100-169	(869-056-00063-4)	49.00	Apr. 1, 2005
170-199	(869-056-00064-2)	50.00	Apr. 1, 2005
200-299	(869-056-00065-1)	17.00	Apr. 1, 2005
300-499	(869-056-00066-9)	31.00	Apr. 1, 2005
500-599	(869-056-00067-7)	47.00	Apr. 1, 2005
600-799	(869-056-00068-5)	15.00	Apr. 1, 2005
800-1299	(869-052-00068-0)	58.00	Apr. 1, 2004
1300-End	(869-052-00069-8)	24.00	Apr. 1, 2004
22 Parts:			
1-299	(869-052-00070-1)	63.00	Apr. 1, 2004
300-End	(869-056-00072-3)	45.00	Apr. 1, 2005
23	(869-052-00072-8)	45.00	Apr. 1, 2004
24 Parts:			
0-199	(869-056-00074-0)	60.00	Apr. 1, 2005
200-499	(869-052-00074-4)	50.00	Apr. 1, 2004
500-699	(869-052-00075-2)	30.00	Apr. 1, 2004
700-1699	(869-056-00077-4)	61.00	Apr. 1, 2005
1700-End	(869-052-00077-9)	30.00	Apr. 1, 2004
25	(869-052-00078-7)	63.00	Apr. 1, 2004
26 Parts:			
§§ 1.0-1.160	(869-052-00079-5)	49.00	Apr. 1, 2004
§§ 1.61-1.169	(869-052-00080-9)	63.00	Apr. 1, 2004
§§ 1.170-1.300	(869-056-00082-1)	60.00	Apr. 1, 2005
§§ 1.301-1.400	(869-052-00082-5)	46.00	Apr. 1, 2004
§§ 1.401-1.440	(869-052-00083-3)	62.00	Apr. 1, 2004
§§ 1.441-1.500	(869-052-00084-1)	57.00	Apr. 1, 2004
*§§ 1.501-1.640	(869-056-00086-3)	49.00	Apr. 1, 2005
*§§ 1.641-1.850	(869-056-00087-1)	60.00	Apr. 1, 2005
§§ 1.851-1.907	(869-056-00088-0)	61.00	Apr. 1, 2005
§§ 1.908-1.1000	(869-056-00089-8)	60.00	Apr. 1, 2005
§§ 1.1001-1.1400	(869-052-00089-2)	61.00	Apr. 1, 2004
§§ 1.1401-1.1550	(869-056-00091-0)	55.00	Apr. 1, 2005
§§ 1.1551-End	(869-052-00091-4)	55.00	Apr. 1, 2004
*2-29	(869-056-00093-6)	60.00	Apr. 1, 2005
30-39	(869-052-00093-1)	41.00	Apr. 1, 2004
40-49	(869-052-00094-9)	28.00	Apr. 1, 2004
*50-299	(869-056-00096-1)	41.00	Apr. 1, 2005

Title	Stock Number	Price	Revision Date	Title	Stock Number	Price	Revision Date
300-499	(869-052-00096-5)	61.00	Apr. 1, 2004	63 (63.8980-End)	(869-052-00149-0)	35.00	July 1, 2004
500-599	(869-056-00098-7)	12.00	⁵ Apr. 1, 2005	64-71	(869-052-00150-3)	29.00	July 1, 2004
*600-End	(869-056-00099-5)	17.00	Apr. 1, 2005	72-80	(869-052-00151-1)	62.00	July 1, 2004
27 Parts:				81-85	(869-052-00152-0)	60.00	July 1, 2004
1-199	(869-052-00099-0)	64.00	Apr. 1, 2004	86 (86.1-86.599-99)	(869-052-00153-8)	58.00	July 1, 2004
200-End	(869-056-00101-1)	21.00	Apr. 1, 2005	86 (86.600-1-End)	(869-052-00154-6)	50.00	July 1, 2004
28 Parts:				87-99	(869-052-00155-4)	60.00	July 1, 2004
0-42	(869-052-00101-5)	61.00	July 1, 2004	100-135	(869-052-00156-2)	45.00	July 1, 2004
43-End	(869-052-00102-3)	60.00	July 1, 2004	136-149	(869-052-00157-1)	61.00	July 1, 2004
29 Parts:				150-189	(869-052-00158-9)	50.00	July 1, 2004
0-99	(869-052-00103-1)	50.00	July 1, 2004	190-259	(869-052-00159-7)	39.00	July 1, 2004
100-499	(869-052-00104-0)	23.00	July 1, 2004	260-265	(869-052-00160-1)	50.00	July 1, 2004
500-899	(869-052-00105-8)	61.00	July 1, 2004	266-299	(869-052-00161-9)	50.00	July 1, 2004
900-1899	(869-052-00106-6)	36.00	July 1, 2004	300-399	(869-052-00162-7)	42.00	July 1, 2004
1900-1910 (§§ 1900 to				400-424	(869-052-00163-5)	56.00	⁸ July 1, 2004
1910.999)	(869-052-00107-4)	61.00	July 1, 2004	425-699	(869-052-00164-3)	61.00	July 1, 2004
1910 (§§ 1910.1000 to				700-789	(869-052-00165-1)	61.00	July 1, 2004
end)	(869-052-00108-2)	46.00	⁸ July 1, 2004	790-End	(869-052-00166-0)	61.00	July 1, 2004
1911-1925	(869-052-00109-1)	30.00	July 1, 2004	41 Chapters:			
1926	(869-052-00110-4)	50.00	July 1, 2004	1, 1-1 to 1-10		13.00	³ July 1, 1984
1927-End	(869-052-00111-2)	62.00	July 1, 2004	1, 1-11 to Appendix, 2 (2 Reserved)		13.00	³ July 1, 1984
30 Parts:				3-6		14.00	³ July 1, 1984
1-199	(869-052-00112-1)	57.00	July 1, 2004	7		6.00	³ July 1, 1984
200-699	(869-052-00113-9)	50.00	July 1, 2004	8		4.50	³ July 1, 1984
700-End	(869-052-00114-7)	58.00	July 1, 2004	9		13.00	³ July 1, 1984
31 Parts:				10-17		9.50	³ July 1, 1984
0-199	(869-052-00115-5)	41.00	July 1, 2004	18, Vol. I, Parts 1-5		13.00	³ July 1, 1984
200-End	(869-052-00116-3)	65.00	July 1, 2004	18, Vol. II, Parts 6-19		13.00	³ July 1, 1984
32 Parts:				18, Vol. III, Parts 20-52		13.00	³ July 1, 1984
1-39, Vol. I		15.00	² July 1, 1984	19-100		13.00	³ July 1, 1984
1-39, Vol. II		19.00	² July 1, 1984	1-100	(869-052-00167-8)	24.00	July 1, 2004
1-39, Vol. III		18.00	² July 1, 1984	101	(869-052-00168-6)	21.00	July 1, 2004
1-190	(869-052-00117-1)	61.00	July 1, 2004	102-200	(869-052-00169-4)	56.00	July 1, 2004
191-399	(869-052-00118-0)	63.00	July 1, 2004	201-End	(869-052-00170-8)	24.00	July 1, 2004
400-629	(869-052-00119-8)	50.00	⁸ July 1, 2004	42 Parts:			
630-699	(869-052-00120-1)	37.00	⁷ July 1, 2004	1-399	(869-052-00171-6)	61.00	Oct. 1, 2004
700-799	(869-052-00121-0)	46.00	July 1, 2004	400-429	(869-052-00172-4)	63.00	Oct. 1, 2004
800-End	(869-052-00122-8)	47.00	July 1, 2004	430-End	(869-052-00173-2)	64.00	Oct. 1, 2004
33 Parts:				43 Parts:			
1-124	(869-052-00123-6)	57.00	July 1, 2004	1-999	(869-052-00174-1)	56.00	Oct. 1, 2004
125-199	(869-052-00124-4)	61.00	July 1, 2004	1000-end	(869-052-00175-9)	62.00	Oct. 1, 2004
200-End	(869-052-00125-2)	57.00	July 1, 2004	44	(869-052-00176-7)	50.00	Oct. 1, 2004
34 Parts:				45 Parts:			
1-299	(869-052-00126-1)	50.00	July 1, 2004	1-199	(869-052-00177-5)	60.00	Oct. 1, 2004
300-399	(869-052-00127-9)	40.00	July 1, 2004	200-499	(869-052-00178-3)	34.00	Oct. 1, 2004
400-End	(869-052-00128-7)	61.00	July 1, 2004	500-1199	(869-052-00179-1)	56.00	Oct. 1, 2004
35	(869-052-00129-5)	10.00	⁶ July 1, 2004	1200-End	(869-052-00180-5)	61.00	Oct. 1, 2004
36 Parts				46 Parts:			
1-199	(869-052-00130-9)	37.00	July 1, 2004	1-40	(869-052-00181-3)	46.00	Oct. 1, 2004
200-299	(869-052-00131-7)	37.00	July 1, 2004	41-69	(869-052-00182-1)	39.00	Oct. 1, 2004
300-End	(869-052-00132-5)	61.00	July 1, 2004	70-89	(869-052-00183-0)	14.00	Oct. 1, 2004
37	(869-052-00133-3)	58.00	July 1, 2004	90-139	(869-052-00184-8)	44.00	Oct. 1, 2004
38 Parts:				140-155	(869-052-00185-6)	25.00	Oct. 1, 2004
0-17	(869-052-00134-1)	60.00	July 1, 2004	156-165	(869-052-00186-4)	34.00	Oct. 1, 2004
18-End	(869-052-00135-0)	62.00	July 1, 2004	166-199	(869-052-00187-2)	46.00	Oct. 1, 2004
39	(869-052-00136-8)	42.00	July 1, 2004	200-499	(869-052-00188-1)	40.00	Oct. 1, 2004
40 Parts:				500-End	(869-052-00189-9)	25.00	Oct. 1, 2004
1-49	(869-052-00137-6)	60.00	July 1, 2004	47 Parts:			
50-51	(869-052-00138-4)	45.00	July 1, 2004	0-19	(869-052-00190-2)	61.00	Oct. 1, 2004
52 (52.01-52.1018)	(869-052-00139-2)	60.00	July 1, 2004	20-39	(869-052-00191-1)	46.00	Oct. 1, 2004
52 (52.1019-End)	(869-052-00140-6)	61.00	July 1, 2004	40-69	(869-052-00192-9)	40.00	Oct. 1, 2004
53-59	(869-052-00141-4)	31.00	July 1, 2004	70-79	(869-052-00193-8)	63.00	Oct. 1, 2004
60 (60.1-End)	(869-052-00142-2)	58.00	July 1, 2004	80-End	(869-052-00194-5)	61.00	Oct. 1, 2004
60 (Apps)	(869-052-00143-1)	57.00	July 1, 2004	48 Chapters:			
61-62	(869-052-00144-9)	45.00	July 1, 2004	1 (Parts 1-51)	(869-052-00195-3)	63.00	Oct. 1, 2004
63 (63.1-63.599)	(869-052-00145-7)	58.00	July 1, 2004	1 (Parts 52-99)	(869-052-00196-1)	49.00	Oct. 1, 2004
63 (63.600-63.1199)	(869-052-00146-5)	50.00	July 1, 2004	2 (Parts 201-299)	(869-052-00197-0)	50.00	Oct. 1, 2004
63 (63.1200-63.1439)	(869-052-00147-3)	50.00	July 1, 2004	3-6	(869-052-00198-8)	34.00	Oct. 1, 2004
63 (63.1440-63.8830)	(869-052-00148-1)	64.00	July 1, 2004	7-14	(869-052-00199-6)	56.00	Oct. 1, 2004
				15-28	(869-052-00200-3)	47.00	Oct. 1, 2004
				29-End	(869-052-00201-1)	47.00	Oct. 1, 2004

Title	Stock Number	Price	Revision Date
49 Parts:			
1-99	(869-052-00202-0)	60.00	Oct. 1, 2004
100-185	(869-052-00203-8)	63.00	Oct. 1, 2004
186-199	(869-052-00204-6)	23.00	Oct. 1, 2004
200-399	(869-052-00205-4)	64.00	Oct. 1, 2004
400-599	(869-052-00206-2)	64.00	Oct. 1, 2004
600-999	(869-052-00207-1)	19.00	Oct. 1, 2004
1000-1199	(869-052-00208-9)	28.00	Oct. 1, 2004
1200-End	(869-052-00209-7)	34.00	Oct. 1, 2004
50 Parts:			
1-16	(869-052-00210-1)	11.00	Oct. 1, 2004
17.1-17.95	(869-052-00211-9)	64.00	Oct. 1, 2004
17.96-17.99(h)	(869-052-00212-7)	61.00	Oct. 1, 2004
17.99(i)-end and 17.100-end	(869-052-00213-5)	47.00	Oct. 1, 2004
18-199	(869-052-00214-3)	50.00	Oct. 1, 2004
200-599	(869-052-00215-1)	45.00	Oct. 1, 2004
600-End	(869-052-00216-0)	62.00	Oct. 1, 2004
CFR Index and Findings			
Aids	(869-052-00049-3)	62.00	Jan. 1, 2004
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¹ Because Title 3 is an annual compilation, this volume and all previous volumes should be retained as a permanent reference source.

² The July 1, 1985 edition of 32 CFR Parts 1-189 contains a note only for Parts 1-39 inclusive. For the full text of the Defense Acquisition Regulations in Parts 1-39, consult the three CFR volumes issued as of July 1, 1984, containing those parts.

³ The July 1, 1985 edition of 41 CFR Chapters 1-100 contains a note only for Chapters 1 to 49 inclusive. For the full text of procurement regulations in Chapters 1 to 49, consult the eleven CFR volumes issued as of July 1, 1984 containing those chapters.

⁴ No amendments to this volume were promulgated during the period January 1, 2004, through January 1, 2005. The CFR volume issued as of January 1, 2004 should be retained.

⁵ No amendments to this volume were promulgated during the period April 1, 2000, through April 1, 2004. The CFR volume issued as of April 1, 2000 should be retained.

⁶ No amendments to this volume were promulgated during the period July 1, 2000, through July 1, 2004. The CFR volume issued as of July 1, 2000 should be retained.

⁷ No amendments to this volume were promulgated during the period July 1, 2002, through July 1, 2004. The CFR volume issued as of July 1, 2002 should be retained.

⁸ No amendments to this volume were promulgated during the period July 1, 2003, through July 1, 2004. The CFR volume issued as of July 1, 2003 should be retained.